



CERTIFIED TRUE COPY
Wilfredo Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 DEC 19 2017

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

VELIA J. CRUZ,
 Petitioner,

G.R. No. 205539

Present:

VELASCO, JR., J., *Chairperson*,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

-versus-

**SPOUSES MAXIMO and SUSAN
 CHRISTENSEN,**
 Respondents.

Promulgated:
 October 4, 2017

Wilfredo Lapitan

X-----X

DECISION

LEONEN, J.:

The prior service and receipt of a demand letter is unnecessary in a case for unlawful detainer if the demand to vacate is premised on the expiration of the lease, not on the non-payment of rentals or non-compliance of the terms and conditions of the lease.

This is a Petition for Review on Certiorari¹ assailing the October 11, 2012 Decision² and January 21, 2013 Resolution³ of the Court of Appeals in CA-G.R. SP No. 117773. The assailed Decision reversed the Regional Trial

¹ *Rollo*, pp. 3-32.

² *Id.* at 34-43. The Decision was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez of the Special Ninth Division, Court of Appeals, Manila.

³ *Id.* at 44-45. The Resolution was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez of the Former Special Ninth Division, Court of Appeals, Manila.

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Court Decision⁴ dated December 29, 2010, which ordered respondents Maximo and Susan Christensen (the Spouses Christensen) to pay unpaid rentals and to vacate petitioner Velia J. Cruz's (Cruz) property. The Court of Appeals instead reinstated the Metropolitan Trial Court Decision⁵ dated June 3, 2010, dismissing the complaint for unlawful detainer for Cruz's failure to prove that a demand letter was validly served on the Spouses Christensen.

Cruz alleged that she was the owner of a parcel of land located at A. Santos Street, Balong Bato, San Juan City, which she acquired through inheritance from her late mother, Ruperta D. Javier (Javier). She further alleged that Susan Christensen (Susan) had been occupying the property during Javier's lifetime, as they had a verbal lease agreement.⁶

Cruz claimed that ever since she inherited the property, she tolerated Susan's occupancy of the property. However, due to Susan's failure and refusal to pay rentals of ₱1,000.00 per month, she was constrained to demand that Susan vacate the property and pay all unpaid rentals.⁷

The matter was referred to barangay conciliation in Barangay Balong Bato, San Juan, despite the parties being residents of different cities. The parties, however, were unable to settle into a compromise. As a result, the Punong Barangay issued a Certificate to File Action⁸ on August 11, 2005.⁹

Three (3) years later, or on August 5, 2008, Cruz, through counsel, sent Susan a final demand letter,¹⁰ demanding that she pay the unpaid rentals and vacate the property within 15 days from receipt.¹¹

Cruz alleged that despite receipt of the demand letter, Susan refused to vacate and pay the accrued rentals from June 1989 to February 2009 in the amount of ₱237,000.00, computed at ₱1,000.00 per month. Thus, Cruz was constrained to file a Complaint¹² for unlawful detainer¹³ on April 27, 2009.

In her Answer,¹⁴ Susan admitted to occupying a portion of the property since 1969 on a month-to-month lease agreement. However, she denied that she failed to pay her rentals since 1989 or that she refused to pay

⁴ Id. at 145-147. The Decision, docketed as SCA No. 3468, was penned by Judge Myrna V. Lim-Verano of Branch 160, Regional Trial Court, Pasig City.

⁵ Id. at 112-121. The Decision, docketed as Civil Case No. 9718, was penned by Presiding Judge Ronaldo B. Reyes of Branch 58, Metropolitan Trial Court of San Juan City.

⁶ Id. at 112.

⁷ Id. at 112-113.

⁸ Id. at 68.

⁹ Id. at 113.

¹⁰ Id. at 69-70.

¹¹ Id. at 113.

¹² Id. at 60-65.

¹³ Id. at 112-113.

¹⁴ Id. at 72-74.

them, attaching receipts of her rental payments as evidence. She alleged that Cruz refused to receive her rental payments sometime in 2002. Susan likewise denied receiving any demand letter from Cruz and claims that the signature appearing on the registry return card of the demand letter¹⁵ was not her signature.¹⁶

On June 3, 2010, Branch 58, Metropolitan Trial Court, San Juan City rendered a Decision¹⁷ dismissing Cruz's Complaint. It found that for the registry receipts and registry return cards to serve as proof that the demand letter was received, it must first be authenticated through an affidavit of service by the person mailing the letter. It also found that Cruz failed to prove who received the demand letter and signed the registry return receipt, considering that Susan denied it.¹⁸

Cruz appealed to the Regional Trial Court.¹⁹ On December 29, 2010, Branch 160, Regional Trial Court, Pasig City rendered a Decision²⁰ reversing the Metropolitan Trial Court Decision. It found that the bare denial of receipt would not prevail over the registry return card showing actual receipt of the demand letter.²¹ The dispositive portion of this Decision read:

WHEREFORE, premises considered, the lower court's decision is hereby REVERSED.

Susan Christensen and all persons claiming rights under her are hereby ordered:

1. To vacate the premises A. Santos Street, Balong Bato, San Juan City, Metro Manila, and to surrender possession thereof to plaintiff;
2. To pay the accrued unpaid rentals in the amount of One Thousand Pesos (P1,000.00) per month reckoned from April 2000 (based on the evidence presented) until such time defendant-appellee, and all persons claiming rights under her, actually vacated and surrendered peaceful possession of the subject real property in favor of the plaintiff-appellant;
3. To pay the sum of Twenty Thousand Pesos (P20,000.00) as and by way of attorney's fees; and
4. The costs of suit.

Costs against appellee.

¹⁵ Id. at 71.

¹⁶ Id. at 113-114.

¹⁷ Id. at 112-121.

¹⁸ Id. at 119-120.

¹⁹ Id. at 122-124.

²⁰ Id. at 145-147.

²¹ Id. at 146.

So ordered.²²

The Spouses Christensen appealed to the Court of Appeals,²³ arguing that Cruz was unable to prove Susan's actual receipt of the demand letter.²⁴ They likewise alleged that Cruz's late filing of her Memorandum before the Regional Trial Court should have been ground to dismiss her appeal.²⁵

On October 11, 2012, the Court of Appeals rendered a Decision²⁶ reversing the Regional Trial Court Decision and reinstating the Metropolitan Trial Court Decision. According to the Court of Appeals, the filing of a memorandum of appeal within 15 days from the receipt of order is mandatory under Rule 40, Section 7(b) of the Rules of Court and the failure to comply will result in the dismissal of the appeal.²⁷ It likewise concurred with the Metropolitan Trial Court's finding that registry receipts and return cards are insufficient proof of receipt.²⁸ The dispositive portion of this Decision read:

IN VIEW OF THE FOREGOING[,] the instant Petition for Review is GRANTED. The assailed Decision dated 29 December 2010 of the Regional Trial Court, Branch 160, Pasig City is hereby REVERSED and SET ASIDE. The Decision rendered by the Municipal [sic] Trial Court, San Juan City dated 3 June 2010 is hereby ORDERED REINSTATED.

SO ORDERED.²⁹

Cruz filed a Motion for Reconsideration³⁰ but it was denied by the Court of Appeals in a Resolution³¹ dated January 21, 2013. Hence, this Petition³² was filed.

Petitioner concedes that while the 15-day period for filing the memorandum of appeal is mandatory under the Rules of Court,³³ the Regional Trial Court nonetheless opted to resolve her appeal on its merits, showing that the issues and arguments raised in the appeal outweigh its

²² Id. at 147.

²³ Id. at 148-167.

²⁴ Id. at 158-160.

²⁵ Id. at 159-162.

²⁶ Id. at 34-43.

²⁷ Id. at 38-41.

²⁸ Id. at 41-42.

²⁹ Id. at 42.

³⁰ Id. at 46-59.

³¹ Id. at 44-45. The Resolution was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez of the Former Special Ninth Division, Court of Appeals, Manila.

³² Id. at 3-32. The Comment (*rollo*, pp. 215-231) was filed on July 4, 2013 while the Reply (*rollo*, pp. 234-248) was filed on October 17, 2013. The parties were directed to submit their respective memoranda (*rollo*, pp. 251-276 and 277-296) on December 4, 2013 (*rollo*, pp. 250-250-A).

³³ Id. at 258-260.

procedural defect.³⁴

Petitioner submits that other than respondent Susan's bare denial of signing the registry return card, respondents did not deny receipt of the demand letter at their known address or the authority of the signatory on the registry return card to receive registered mail.³⁵ She argues that notice by registered mail is considered service to the recipient, and this cannot be overcome simply by denying the signature appearing on the registry return card.³⁶ Petitioner points out that before receiving the demand letter, the matter was already the subject of a barangay conciliation proceeding, leading to the ejectment suit as the reasonable consequence of respondents' non-compliance with the demand to pay rentals and to vacate the property.³⁷

Petitioner likewise submits that a prior demand is not required in an action for unlawful detainer since prior demand only applies if the grounds of the complaint are non-payment of rentals or non-compliance with the conditions of the lease. She points out that where the action is grounded on the expiration of the contract of lease, as in this instance where the lease was on a month-to-month basis, the failure to pay the rentals for the month terminates the lease. She argues that a notice or demand to vacate would be unnecessary³⁸ since "nothing in the law obligates . . . [the] owner-lessor to allow [the lessees] to stay forever in the leased property without paying any reasonable compensation or rental."³⁹

Respondents counter that the Court of Appeals did not err in finding that the Regional Trial Court should have dismissed her appeal since petitioner admitted that she belatedly filed her memorandum of appeal before the trial court. They maintain that petitioner has not shown any justifiable reason for the relaxation of technical rules.⁴⁰ They insist that the demand to pay or to vacate is a jurisdictional requirement that must be complied with before an ejectment suit may be brought.⁴¹

Respondents maintain that registry receipts and registry return cards are not sufficient to establish that respondents received the demand letter considering that they must first be authenticated to serve as proof of receipt. They argue that the denial of receipt is sufficient since petitioner had the burden of proving that respondents actually received the demand letter.⁴² They further contend that petitioner's complaint was grounded on the non-payment of lease rentals and not, as petitioner belatedly claims, on the

³⁴ Id. at 261-262.

³⁵ Id. at 263-264.

³⁶ Id. at 265.

³⁷ Id.

³⁸ Id. at 268-271.

³⁹ Id. at 270.

⁴⁰ Id. at 284-287.

⁴¹ Id. at 287-288.

⁴² Id. at 289.

expiration lease; thus, petitioner must still comply with the jurisdictional requirement of prior demand.⁴³

The issues for resolution before this Court are the following:

First, whether or not the Regional Trial Court should have dismissed the appeal considering that petitioner Velia J. Cruz's Memorandum of Appeals was not filed within the required period; and

Finally, whether or not petitioner Velia J. Cruz was able to prove Spouses Maximo and Susan Christensen's receipt of her demand letter before filing her Complaint for unlawful detainer. In order to resolve the second issue, however, this Court must first address whether or not a demand was necessary considering that Maximo and Susan Christensen had a month-to-month lease on the property.

The Petition is granted.

I

Procedural rules of even the most mandatory character may be suspended upon a showing of circumstances warranting the exercise of liberality in its strict application.

Petitioner admits that her Memorandum of Appeal was filed nine (9) days beyond the 15-day period but that the Regional Trial Court opted to resolve her case on its merits in the interest of substantial justice.⁴⁴

Rule 40, Section 7 of the Rules of Court states the procedure of appeal before the Regional Trial Court. It provides:

Section 7. Procedure in the Regional Trial Court.—

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) *Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum.*

⁴³ Id. at 292–293.

⁴⁴ Id. at 262.

Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed. (Emphasis supplied)

The rule requiring the filing of the memorandum within the period provided is mandatory. Failure to comply will result in the dismissal of the appeal.⁴⁵ *Enriquez v. Court of Appeals*⁴⁶ explained:

Rule 40, Section 7 of the 1997 Rules of Civil Procedure is a new provision. Said section is based on Section 21 (c) and (d) of the Interim Rules Relative to the Implementation of the Judiciary Reorganization Act of 1980 (B.P. Blg. 129) with modifications. These include the following changes: (a) the appellant is required to submit a memorandum discussing the errors imputed to the lower court within fifteen (15) days from notice, and the appellee is given the same period counted from receipt of the appellant's memorandum to file his memorandum; (b) the failure of the appellant to file a memorandum is a ground for the dismissal of the appeal.

Rule 40, Section 7 (b) provides that, "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal." The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.⁴⁷

Rule 40, Section 7 is likewise jurisdictional since the Regional Trial Court can only resolve errors that are specifically assigned and properly argued in the memorandum.⁴⁸ Thus, dismissals based on this rule are premised on the *non-filing* of the memorandum. A trial court does not acquire jurisdiction over an appeal where the errors have not been specifically assigned.

⁴⁵ See *Ang v. Grageda*, 523 Phil. 830 (2006) [Per J. Callejo, Jr., First Division].

⁴⁶ 444 Phil. 419 (2003) [Per J. Quisumbing, Second Division].

⁴⁷ *Id.* at 427-428 citing 2 JOSE Y. FERIA AND MARIA CONCEPCION S. NOCHE, CIVIL PROCEDURE ANNOTATED 146 (2001); *Diokno v. Rehabilitation Finance Corp.*, 91 Phil. 608, 610 (1952) [Per J. Labrador, En Banc]; *Baranda v. Gustilo*, 248 Phil. 205 (1988) [Per J. Gutierrez, Jr., Third Division]; STATSKY, LEGAL THESAURUS AND DICTIONARY 263 (1986).

⁴⁸ See *Enriquez v. Court of Appeals*, 444 Phil. 419 (2003) [Per J. Quisumbing, Second Division].

In this instance, a Memorandum of Appeal was filed late but was nonetheless given due course by the Regional Trial Court. Thus, the jurisdictional defect was cured since petitioner was able to specifically assign the Municipal Trial Court's errors, which the Regional Trial Court was able to address and resolve. This Court also notes that all substantial issues have already been fully litigated before the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals.

Procedural defects should not be relied on to defeat the substantive rights of litigants.⁴⁹ Even procedural rules of the most mandatory character may be suspended where "matters of life, liberty, honor or property"⁵⁰ warrant its liberal application. *Ginete v. Court of Appeals*⁵¹ added that courts may also consider:

(1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory[, and that] (5) the other party will not be unjustly prejudiced thereby.⁵²

Liberality in the application of Rule 40, Section 7 is warranted in this case in view of the potential inequity that may result if the rule is strictly applied. As will be discussed later, petitioner's meritorious cause would be unduly prejudiced if this case were to be dismissed on technicalities.

II

Possession of a property belonging to another may be tolerated or permitted, even without a prior contract between the parties, as long as there is an implied promise that the occupant will vacate upon demand.⁵³ Refusal to vacate despite demand will give rise to an action for summary ejectment.⁵⁴ Thus, prior demand is a jurisdictional requirement before an action for forcible entry or unlawful detainer may be instituted.

Under Rule 70, Section 1 of the Rules of Civil Procedure, an action for unlawful detainer may be brought against a possessor of a property who unlawfully withholds possession after the termination or expiration of the right to hold possession. Rule 70, Section 2 of the Rules of Civil Procedure requires that there must first be a prior demand to pay or comply with the conditions of the lease and to vacate before an action can be filed:

⁴⁹ See *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998 [Per J. Romero, Third Division] citing *Carco Motor Sales v. Court of Appeals*, 78 SCRA 526 (1977).

⁵⁰ *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998 [Per J. Romero, Third Division].

⁵¹ 357 Phil. 36 (1998) [Per J. Romero, Third Division].

⁵² *Id.* at 54 citing *Paulino v. Court of Appeals*, 170 Phil. 308 (1977) [Per J. Teehankee, First Division].

⁵³ See *Yu v. De Lara*, 116 Phil. 1105 (1962) [Per J. Makalintal, En Banc].

⁵⁴ See *Yu v. De Lara*, 116 Phil. 1105 (1962) [Per J. Makalintal, En Banc].

Section 1. Who may institute proceedings, and when. — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Section 2. Lessor to proceed against lessee only after demand. — Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

The property in this case is owned by petitioner. Respondents had a month-to-month lease with petitioner's predecessor-in-interest. Petitioner contends that no prior demand was necessary in this case since her Complaint was premised on the expiration of respondents' lease, not on the failure to pay rent due or to comply with the conditions of the lease.

The jurisdictional requirement of prior demand is unnecessary if the action is premised on the termination of lease due to expiration of the terms of contract. The complaint must be brought on the allegation that the lease has expired and the lessor demanded the lessee to vacate, not on the allegation that the lessee failed to pay rents.⁵⁵ The cause of action which would give rise to an ejectment case would be the expiration of the lease. Thus, the requirement under Rule 70, Section 2 of a prior "demand to pay or comply with the conditions of the lease and to vacate" would be unnecessary.⁵⁶

In *Racaza v. Susana Realty*,⁵⁷ the lessee was asked by the lessor to vacate since the lessor needed the property. In *Labastida v. Court of Appeals*,⁵⁸ the month-to-month lease was deemed to have expired upon receipt of the notice to vacate at the end of the month. In *Tubiano v. Razo*,⁵⁹

⁵⁵ See *Racaza v. Susana Realty*, 125 Phil. 307 (1966) [Per J. Regala, En Banc].

⁵⁶ See *Co Tiamco v. Diaz*, 78 Phil. 672 (1946) [Per CJ. Moran, En Banc].

⁵⁷ 125 Phil. 307 (1966) [Per J. Regala, En Banc].

⁵⁸ 351 Phil. 162 (1998) [Per J. Mendoza, Second Division].

⁵⁹ 390 Phil. 863 (2000) [Per J. Purisima, Third Division].

the lessee was explicitly informed that her month-to-month lease would not be renewed.

Admittedly, the Complaint⁶⁰ in this case alleges that petitioner's verbal consent and tolerance was withdrawn due to respondents' "continuous failure and adamant refusal to pay rentals"⁶¹ and allegations of accrued unpaid rentals from June 1989 to February 2009.⁶² The demand letter dated August 5, 2008 also specifies that it was premised on respondents' non-payment of the "reasonable compensation verbally agreed upon."⁶³ This would have been enough to categorize the complaint for unlawful detainer as one for non-payment of rentals, not one for expiration of lease.

However, respondents' Answer⁶⁴ to the Complaint is telling. Respondents admit that they only had a month-to-month lease since 1969. They contend that they had been continuously paying their monthly rent until sometime in 2002, when petitioner *refused to receive it*.⁶⁵ Thus, as early as 2002, petitioner, as the lessor, already refused to renew respondents' month-to-month verbal lease. Therefore, respondents' lease had already long expired before petitioner sent her demand letters.

Respondents cannot feign ignorance of petitioner's demand to vacate since the matter was brought to barangay conciliation proceedings in 2005. The barangay certification issued on August 11, 2005 shows that no compromise was reached between the parties.⁶⁶

Therefore, respondents' insistence on the non-receipt of the demand letter is misplaced. Their verbal lease over the property had already expired sometime in 2002. They were explicitly told to vacate in 2005. They continued to occupy the property until petitioner sent her final demand letter in 2008. The demand letter would have been unnecessary since respondents' continued refusal to vacate despite the expiration of their verbal lease was sufficient ground to bring the action.

Respondents have occupied the property since 1969, or for 48 years on a mere verbal month-to-month lease agreement and by sheer tolerance of petitioner and her late mother. All this time, respondents have failed to formalize their agreement in order to protect their right of possession. Their continued occupation of the property despite the withdrawal of the property

⁶⁰ *Rollo*, pp. 60-65.

⁶¹ *Id.* at 61.

⁶² *Id.* at 62.

⁶³ *Id.* at 69.

⁶⁴ *Id.* at 72-74.


⁶⁵ *Id.* at 62.

⁶⁶ *Id.* at 68.


owner's consent and tolerance deprived the property owner of her right to use and enjoy the property as she sees fit.

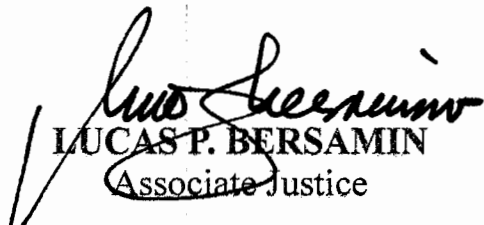
WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The Court of Appeals October 11, 2012 Decision and January 21, 2013 Resolution in CA-G.R. SP No. 117773 are **REVERSED** and **SET ASIDE**. Respondents Maximo and Susan Christensen and all persons claiming rights under them are ordered, upon finality of this Decision, to immediately **VACATE** the property and **DELIVER** its peaceful possession to petitioner Velia J. Cruz. Respondents Maximo and Susan Christensen are likewise ordered to **PAY** petitioner Velia J. Cruz ₱1,000.00 as monthly rental plus its interest at the rate of six percent (6%) per annum, to be computed from April 27, 2009, the date of judicial demand, until the finality of this Decision.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

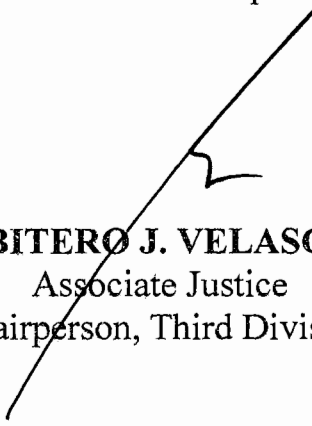

LUCAS P. BERSAMIN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

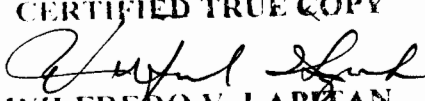
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.




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.

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WILFREDO V. LAPID
Division Clerk of Court
Third Division
DEC 19 2017



MARIA LOURDES P. A. SERENO
Chief Justice