Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

C.F. SHARP CREW MANAGEMENT, INC./ MANNY SABINO and/or NORWEGIAN CRUISE LINE LTD., Petitioners,	**G.R. No. 213731**
	Present:
	VELASCO, JR., *J., Chairperson,* BERSAMIN, LEONEN, MARTIRES,* and GESMUNDO, *JJ.*
- versus -	
	Promulgated:
JOWELL P. SANTOS, Respondent.	August 1, 2018

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DECISION

GESMUNDO, *J.:*

This is an appeal by *certiorari* seeking to reverse and set aside the May 20, 2014 Decision[1] and the July 30, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 132805. The CA reversed and set aside the July 30, 2013 Decision and September 24, 2013 Resolution of the National Labor Relations Commission *(NLRC)* and reinstated the November 23, 2012 Decision of the Labor Arbiter *(LA),* a case for permanent and total disability benefits of a seafarer.

* On leave.
[1] *Rollo,* pp. 39-49; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan, concurring.
[2] Id. at 71-72.

The Antecedents

Jowell P. Santos *(respondent)* was hired as an environmental operator by C.F. Sharp Crew Management, Inc., *(CF Sharp)* for and in behalf of its principal, Norwegian Cruise Line, Ltd., collectively known as petitioners, on board the vessel "M/S Norwegian Gem" for a period of nine (9) months. He was deployed on September 9, 2011.

Sometime in December 2011, respondent experienced dizziness, over fatigue, frequent urination and blurring of the eyesight. He was brought to the ship's clinic for initial medical examination and was found to have elevated blood sugar and blood pressure. He was immediately referred to Cape Canaveral Hospital in Miami, Florida, USA, where he was found to have a history of diabetes and has been smoking a pack of cigarettes daily for ten (10) years.

On January 12, 2012, respondent was repatriated to the Philippines. The next day, or on January 13, 2012, he was immediately referred to CF Sharp's company-designated physicians at the Sachly International Health Partners Clinic *(SIHPC)*. The physicians subjected respondent to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. Respondent was advised to continue his medications.

On May 4, 2012, respondent was examined by a nephrologist who noted that he was asymptomatic with a blood pressure *(BP)* of 120/70. His urinalysis and serum creatinine were normal. Thus, he was cleared from a nephrological standpoint and was again advised to continue his maintenance medications.

Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for hypertension and diabetes was Grade 12.[3]

Unconvinced, respondent consulted Dr. May S. Donato-Tan *(Dr. Donato-Tan)*, a specialist in Internal Medicine and Cardiology. In her medical certificate, Dr. Donato-Tan noted that respondent had high blood pressure and uncontrolled diabetes mellitus. She also opined that respondent's condition was work-related due to the pressure in the cruise ship, which elevated his blood pressure, and that the food therein was not balanced, which elevated his

[3] Id. at 41.

blood sugar. She concluded that respondent was permanently disabled to discharge his duties as a seafarer.[4]

Hence, respondent filed a complaint for disability and sickness benefits with damages before the LA.

The LA Ruling

In its decision dated November 23, 2012, the LA ruled in favor of respondent. It found that respondent suffered from permanent and total disabilities due to his hypertension and diabetes. The LA also awarded the maximum benefits provided by the Collective Bargaining Agreement *(CBA)* between petitioners and respondent. The dispositive portion of the LA decision reads:

> WHEREFORE, all the foregoing premises considered, judgment is hereby rendered, ordering respondents C.F. Sharp Crew Management, Inc., and/or Norwegian Cruise Line LTD., to pay, jointly and severally, complainant Jowell P. Santos the aggregate amount of NINETY ONE THOUSAND SIX HUNDRED THIRTY THREE AND 66/100 US DOLLARS (US$91,633.66) or its Philippine peso equivalent at the time of actual payment, representing permanent disability benefits and sickness wages, plus ten percent (10%) thereof as and for attorney's fees.
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> All other claims are dismissed for lack of merit.
>
> **SO ORDERED**.[5]

Aggrieved, petitioners appealed to the NLRC.

The NLRC Ruling

In its decision dated July 30, 2013, the NLRC modified the decision of the LA. It held that respondent did not suffer from a permanent and total disability because he failed to prove that the diabetes and hypertension he suffered were work-related. The NLRC gave credence to the medical assessment and finding of the company-designated physicians, which stated that respondent only suffered a partial disability of Grade 12. It also found

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[4] Id.
[5] Id. at 7.

that respondent was entitled to a sickness pay. The NLRC disposed the case in this wise:

> **WHEREFORE**, foregoing considered, the appeal is partly **GRANTED**. The decision dated 23 November 2012 is **MODIFIED**. The grant of total and permanent disability benefits is set aside but the award of sickness pay in the sum of One Thousand Six Hundred Thirty Three US Dollars and 66/100 (US$1,633.66) remains. In addition, appellants are ordered to pay appellee the sum of Five Thousand Two Hundred Twenty-Five US Dollars (US$5,225.00) as financial assistance for his illness.
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> **SO ORDERED**.[6]

Respondent filed a motion for reconsideration but it was denied by the NLRC in its resolution dated September 24, 2013.

Undaunted, respondent filed a petition for *certiorari* before the CA arguing that the NLRC committed grave abuse of discretion.

The CA Ruling

In its decision dated May 20, 2014, the CA reversed and set aside the NLRC ruling and reinstated the LA ruling. It held that respondent suffered from permanent and total disabilities because of his hypertension and diabetes. The CA opined that respondent's diseases were work-related because these were caused by the unhealthy working conditions in petitioners' ship. It also ruled that respondent had the right to consult his independent physician of choice to determine the degree of his disability. The CA concluded that since 120 days had passed but respondent had not returned to work, he is entitled to permanent and total disability benefits. The *fallo* of the CA decision states:

> WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed decision dated July 30, 2013 and the resolution dated September 24, 2013 of the National Labor Relations Commission (Fifth Division) in NLRC NCR-OFW-M-04-06542-12, NLRC LAC No. 01-000071-13 are hereby REVERSED and SET ASIDE, and the decision dated November 23, 2012 of the Labor Arbiter is REINSTATED.
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> SO ORDERED.[7]

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[6] Id. at 8.
[7] Id. at 49.

Petitioners moved for reconsideration but it was denied by the CA in its resolution dated July 30, 2014.

Hence, this petition, chiefly anchored on the following issues:

I

WHETHER THE PROVISIONS OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION *(POEA)* STANDARD EMPLOYMENT CONTRACT *(SEC)* WERE COMPLIED WITH BY THE PARTIES.

II

WHETHER RESPONDENT IS ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS DUE TO HIS HYPERTENSION AND DIABETES.

Petitioners argue that the medical certificate of respondent's physician of choice should not have been considered because the conflicting medical assessments were not referred to a third doctor under the POEA-SEC. They also assert that diabetes is not listed as a work-related illness under Section 32-A of the POEA-SEC, hence, not compensable. Petitioners further claim that respondent's hypertension was not compensable because it does not involve an end organ damage for essential hypertension. They likewise highlighted that the mere lapse of the 120-day period does not result in the grant of total and permanent disability benefits because the timely medical findings of the company-designated physicians must be respected. As the said physician only gave a Grade 12 disability, petitioners conclude that respondent is only entitled to US$5,225.00.

In his Comment, [8] respondent countered that the petition raises questions of fact, which cannot be entertained by the Court. He also argued that diabetes is a compensable disease, which was aggravated by his hypertension. Respondent claimed that his diseases were presumed to be work-related and petitioners failed to prove that there was no reasonable casual connection with the illnesses sustained and the work performed.

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[8] Id. at 78-90.

In their Reply,[9] petitioners reiterated that mere inability to work for a period of 120 days does not automatically entitle a seafarer to permanent and total disability benefits. They argued that respondent's allegation that his work conditions in their cruise ship aggravated his condition was completely unsubstantiated. Petitioners concluded that, at best, respondent is only entitled to a Grade 12 disability benefit under the POEA-SEC.

The Court's Ruling

The Court finds the petition meritorious.

The law that defines permanent and total disability of laborers would be Article 192 (c) (1) of the Labor Code, which provides that:

> ART. 192. Permanent Total Disability xxx
>
> (c) The following disabilities shall be deemed total and permanent:
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> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

On the other hand, the rule referred to — Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code *(IRR)* — states:

> Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

These provisions should be read in relation to the POEA-SEC wherein Sec. 20(A) (3) states:

> In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time

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[9] Id. at 107-130.

> he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.[10]

In *Crystal Shipping, Inc. v. Natividad*[11] *(Crystal Shipping),* the Court ruled that "[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."[12] Thereafter, litigant-seafarers relied on *Crystal Shipping* to claim permanent and total disability benefits because they were incapacitated to work for more than 120 days.

In *Vergara v. Hammonia Maritime Services, Inc.*[13] *(Vergara),* however, the Court declared that the doctrine in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — is not absolute. By considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Further, the disability grading issued by the company-designated physician was given more weight compared to the mere incapacity of the seafarer for a period of more than 120 days.

Recently, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*[14] *(Elburg),* it was confirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, it was held that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
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> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

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[10] Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, POEA Memorandum Circular No. 010-10, October 26, 2010.
[11] 510 Phil. 332 (2005).
[12] Id. at 340.
[13] 588 Phil. 895, 912 (2008).
[14] 765 Phil. 341 (2015).

> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
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> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[15]

Finally, in *Marlow Navigation Philippines, Inc. v. Osias,*[16] the Court reaffirmed: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.[17]

The company-designated physicians timely gave their medical assessment within the 120-day period

The CA found that since respondent was unable to work as a seafarer for more than 120 days, he is deemed to have a permanent and total disability.

The Court disagrees.

While a seafarer is entitled to temporary total disability benefits during his treatment period, it does not follow that he should likewise be entitled to permanent total disability benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to have permanent disability because of the period he was out of work and could not work, **but the extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the**

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[15] Id. at 362-363.
[16] 773 Phil. 428 (2015).
[17] Id. at 443.

disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages.[18]

It is the doctor's findings that should prevail as he or she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. The physician's declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.[19]

Accordingly, the timely medical assessment of a company-designated physician is given great significance by the Court to determine whether a seafarer is entitled to disability benefits. Indeed, the mere inability of a seafarer to work for a period of 120 days is not the sole basis to determine a seafarer's disability.

In this case, respondent was repatriated in the Philippines on January 12, 2012. The next day, or on January 13, 2012, he was immediately referred to CF Sharp's company-designated physicians. He was then subjected to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. On May 4, 2012, respondent was cleared from the nephrology standpoint and was advised to continue his maintenance medications. Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for his hypertension and diabetes was Grade 12.[20]

Verily, the company-designated physicians suitably gave their medical assessment of respondent's disability before the lapse of the 120-day period. It was even unnecessary to extend the period of medical assessment to 240 days. After rigorous medical diagnosis and treatments, the company-designated physicians found that respondent only had a partial disability and gave a Grade 12 disability rating.

As the medical assessment of the company-designated physicians was meticulously and timely provided, it must be given weight and credibility by the Court.

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[18] See *INC Shipmanagement, Inc., et al. v. Rosales,* 744 Phil. 774, 785-786 (2014).
[19] Id. at 786.
[20] *Rollo*, p. 41.

The medical assessment of the company-designated physician was not validly challenged

Sec. 20(A) (3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment:

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[21]

The referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.[22]

In *INC Shipmanagement, Inc. v. Rosales,*[23] the Court stated that to definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, **the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor** whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties. Further, in *Bahia Shipping Services, Inc. v. Constantino,*[24] it was declared that:

> In the absence of any request from Constantino (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.[25]

In this case, petitioner's chosen physician, Dr. Donato-Tan, issued a medical certificate indicating a total and permanent disability because of hypertension and uncontrolled diabetes, which conflicted with the assessment of the company-designated physicians. Glaringly, respondent only presented

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[21] Supra note 16 at 446.
[22] Id.
[23] Supra note 18.
[24] 738 Phil. 564 (2014).
[25] Id. at 576.

a lone medical certificate from Dr. Donato-Tan, which was in contrast with the extensive and numerous medical assessment of the company-designated physicians. Consequently, the credibility and reliability of Dr. Donato-Tan's medical certificate is doubtful.

More importantly, respondent never signified his intention to resolve the disagreement with petitioners' company-designated physicians by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel the petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report of the company-designated physician must be upheld. *Ergo,* he is not entitled to permanent and total disability benefits.

Hypertension and diabetes does not ipso facto result into a permanent and total disability

Even if the medical assessment of respondent's physician of choice is considered on the substantive aspect, the Court finds that the hypertension and diabetes of respondent do not warrant a grant of permanent and total disability benefits.

Essential hypertension is among the occupational diseases enumerated in Sec. 32-A of the POEA-SEC.[26] To enable compensation, the mere occurrence of hypertension, even as it is work-related and concurs with the four (4) basic requisites of the first paragraph of Sec. 32-A, does not suffice. The POEA-SEC requires an element of gravity. It speaks of essential hypertension only as an overture to the impairment of function of body organs like kidneys, heart, eyes and brain. This impairment must then be of such severity as to be resulting in permanent disability. Sec. 32-A, paragraph 2,[27] thus, requires three successive occurrences: first, the contracting of essential hypertension; second, organ impairment arising from essential hypertension; and third, permanent disability arising from that impairment.[28] In keeping

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[26] 20. Essential Hypertension
Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, (e) Ophthalmological evaluation, (f) C-T scan, (g) MRI, (h) MRA, (i) 2-D echo (j) kidney ultrasound and (k) BP monitoring.

[27] Id.

[28] *Manansala v. Marlow Navigation Phils., Inc.,* G.R. No. 208314, August 23, 2017.

with the requisite gravity occasioning essential hypertension, the mere averment of essential hypertension and its incidents do not suffice.[29]

On the other hand, diabetes is not among Sec. 32-A's listed occupational diseases. As with hypertension, it is a complex medical condition typified by gradations. Blood sugar levels classify as normal, pre-diabetes, or diabetes depending on the glucose level of a patient.[30] Diabetes mellitus is a metabolic and a familial disease to which one is pre-disposed by reason of heredity, obesity or old age.[31] It does not indicate work-relatedness and by its nature, is more the result of poor lifestyle choices and health habits for which disability benefits are improper.[32]

In this case, the company-designated physicians found that respondent had Diabetes Mellitus II and hypertension. However, they opined that respondent's hypertension was not essential or primary, hence, it was not severe. Thus, the company-designated physicians concluded that respondent's hypertension was only a partial disability. As stated earlier, the mere occurrence of hypertension does not suffice because the POEA-SEC requires that it be severe or grave in order to become a permanent and total disability.

Similarly, the company-designated physicians' observed that respondent's diabetes, aside from not being listed as an occupational disease, was also not severe, thus, merely a partial disability. The nephrologist even noted that respondent's BP was 120/70 and his urinalysis and serum creatinine were normal. Thus, he was cleared from the nephrology standpoint and was advised to continue his maintenance medications.

On the other hand, respondent's physician of choice simply stated that respondent had hypertension and uncontrolled diabetes because of the unhealthy food in the cruise ship and the stress of work therein. However, the said physician failed to validate her findings with concrete medical and factual proofs and simply based her conclusions on a single medical check-up. Compared to the thorough medical procedure conducted by the company-designated physicians, the findings of respondent's chosen physician were unsubstantiated.

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[29] Id.
[30] Id.
[31] *Status Maritime Corp., et al. v. Spouses Delalamon,* 740 Phil. 175, 198 (2014).
[32] Id.

Manifestly, hypertension and diabetes do not *ipso facto* warrant the award of permanent and total disability benefits to a seafarer. Notably, Sec. 32-A of the POEA-SEC recognizes that a seafarer can still be employed even if he has hypertension and/or diabetes provided that he shows compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes.

As the company-designated physicians opined that respondent only had a Grade 12 disability, then he is only entitled to US$5,225.00 as partial disability benefit.[33] The sickness pay of US$1,633.66 during respondent's period of treatment is also affirmed.

Lastly, pursuant to *Nacar v. Gallery Frames*,[34] the Court imposes on the monetary awards an interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.

WHEREFORE, the petition is **GRANTED.** The May 20, 2014 Decision and the July 30, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 132805 are hereby **REVERSED** and **SET ASIDE**. The July 30, 2013 Decision and September 24, 2013 Resolution of the National Labor Relations Commission, are hereby **REINSTATED with MODIFICATION** that the monetary awards shall earn an interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

[33] See Schedule of Disability Allowances under the POEA-SEC where Grade 12 is US$50,000.00 x 10.45%, or US$5,225.00.
[34] 716 Phil. 267, 283 (2013).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(On leave)
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.

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.

ANTONIO T. CARPIO
Senior Associate Justice
Per Section 12, R.A. 296
The Judiciary Act of 1948, as amended

CERTIFIED TRUE COPY
WILFREDO V. LAPUAN
Division Clerk of Court
Third Division

AUG 30 2018