



Republic of the Philippines  
Supreme Court  
Baguio City

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

REPUBLIC OF THE PHILIPPINES,  
represented by the DEPARTMENT OF  
PUBLIC WORKS AND HIGHWAYS  
(DPWH),

Petitioner,

- versus -

ROGUZA DEVELOPMENT  
CORPORATION,

Respondent.

x ----- x

G.R. No. 199705

Present:

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR.,\* and  
LAZARO-JAVIER, JJ.

Promulgated:

03 APR 2019

*[Handwritten Signature]*

DECISION

CAGUIOA, J.:

*The Case*

This is a Petition for Review on *Certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court against the Decision<sup>2</sup> dated April 26, 2011 (assailed Decision) and Resolution<sup>3</sup> dated December 14, 2011 (assailed Resolution) in CA-G.R. SP No. 107412 rendered by the Court of Appeals (CA), Special Seventeenth Division (CA Special 17<sup>th</sup> Division) and Former Special Seventeenth Division (Former Special 17<sup>th</sup> Division), respectively.

The assailed Decision and Resolution stem from a petition for review assailing the following issuances of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 05-2008, a collection case filed by respondent Roguza Development Corporation (RDC) against petitioner Department of Public Works and Highways (DPWH):

\* On wellness leave.

<sup>1</sup> *Rollo*, pp. 11-71, excluding Annexes.

<sup>2</sup> *Id.* at 72-106. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Marlene Gonzales-Sison and Angelita A. Gacutan concurring.

<sup>3</sup> *Id.* at 107-109.

*[Handwritten Signature]*

1. Arbitral Award<sup>4</sup> dated July 17, 2008 (Arbitral Award) granting RDC's claim in the **reduced** amount of ₱22,409,500.00;
2. Order dated December 8, 2008 (First CIAC Order) denying RDC's motion for reconsideration of the Arbitral Award (First CIAC MR) for having been filed out of time; and
3. Order dated January 26, 2009 (Second CIAC Order) denying RDC's motion for reconsideration of the First CIAC Order (Second CIAC MR).

The assailed Decision and Resolution: (i) increased the Arbitral Award granted in RDC's favor from ₱26,142,577.09 to ₱61,748,346.00; and (ii) set aside the First and Second CIAC Orders for having been issued under the signature of only one of the three members of the Arbitral Tribunal.<sup>5</sup>

### *The Facts*

The undisputed facts, as narrated by RDC in its Complaint, and thereafter adopted by the CA Special 17<sup>th</sup> Division, are as follows:

x x x [RDC] was awarded the construction of the Rosario-Pugo-Baguio Road Rehabilitation Project, Contract Package I by [DPWH]. The project, with a contract duration of 12 months, is a 2.10[-]kilometer diversion road. Accordingly, the Notice to Proceed (NTP) was issued by [DPWH] to [RDC] on May 15, 1997.

x x x Thereafter, [RDC] mobilized its manpower, equipment and other resources necessary for the project and eventually, [RDC] actually commenced construction activities on May 24, 1997.

**x x x However, the project was suspended effective June 4, 1997 due to [DPWH's] failure to secure the required Environmental Clearance Certificate (ECC) and to settle the attendant right of way (ROW) problems. The suspension lasted for almost 32 months or until February 8, 2001 when [RDC] was furnished by [DPWH] with the Resume Order.**

x x x The project was finally accomplished and completed by [RDC] on September 6, 2001.

x x x Meanwhile, [RDC] made its claim upon [DPWH] for the idle time of equipment and other expenses incurred due to the suspension of work on the project in the amount of P93,782,093.64 pursuant to Clause 42.2 in relation to Clause 54.1 of the Conditions of Contract Volume III, Part I (FIDIC) x x x[.]

x x x x

x x x Essentially, the equipment rental component of the foregoing claim was based on the equipment guidebook published by the Association of Carriers and Equipment Lessors, Inc. [ACEL]. x x x

<sup>4</sup> Id. at 110-139.

<sup>5</sup> Id. at 105.

x x x Consequently, [DPWH] created an Ad Hoc Committee to evaluate the foregoing claim of [RDC]. **On September 1, 2003, the Ad Hoc Committee recommended payment of [RDC's] claim but only in the reduced amount of P26,142,577.09 and subject to the condition that [RDC] should waive or no longer claim the balance of its claim including damages.** The Ad Hoc Committee's recommendation was eventually approved by [DPWH's] then Acting Secretary Florante Soriquez.

x x x Notably, the computation for the idle time of equipment component in the above-mentioned recommendation of the Ad Hoc Committee was based on [the lower bare rental rate submitted by RDC in its detailed unit price estimate which forms part of the parties' contract, and *not* the higher ACEL rates<sup>6</sup>].

x x x [RDC] was [purportedly] constrained to accept the [amount tendered by DPWH through a Letter dated November 14, 2006 (Letter-Waiver)]<sup>7</sup> because it was already in financial distress at that time and its financial condition was aggravated by the considerable length of time that elapsed since [RDC's] claim was made until [DPWH] finally decided to tender a substantially reduced settlement amount of its obligation to [RDC].

x x x x

x x x [Subsequently], [RDC] made various representations and demands, both oral and written, upon [DPWH] for the payment of the balance of its entire claim, the final notice of claim having been served upon [DPWH] on January 14, 2008. However, [DPWH] x x x denied [RDC's] claim x x x.<sup>8</sup> (Emphasis and underscoring supplied)

### *CIAC Proceedings*

Prompted by DPWH's repeated refusal to heed its demand for additional compensation, RDC filed a Complaint against the DPWH before the CIAC (CIAC Complaint) demanding payment of ₱67,639,576.55, representing the *balance* of its original claim for idle time compensation corresponding to four (4) bulldozers, two (2) backhoes and two (2) payloaders which were left idle during the suspension of the project.<sup>9</sup>

After due proceedings, the CIAC rendered its Arbitral Award, the dispositive portion of which reads:

**WHEREFORE, judgment is hereby rendered and AWARD is made in favor of Claimant-CONTRACTOR [RDC] and against [DPWH] directing [DPWH] to pay [RDC] the amount of P22,409,500.00.**

Interest on the foregoing amount shall be paid at the rate of 6% per annum from the date of this [Arbitral Award]. After finality hereof, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made, "*this interim*

<sup>6</sup> See Arbitral Award, *rollo*, pp. 114-115.

<sup>7</sup> The Acceptance Letter, signed by Rodolfo G. Zabala, President of RDC, states, that RDC "waives the right to claim any other amount in relation to this claim, including damages." *Id.* at 260.

<sup>8</sup> *Rollo*, pp. 74-76.

<sup>9</sup> See *id.* at 73, 130.



*period being deemed to be at that time already a forbearance of credit” x x x.*<sup>10</sup> (Additional emphasis supplied; italics in the original)

The Arbitral Tribunal held that RDC sufficiently established that it was in financial distress at the time DPWH offered to pay the reduced amount of ₱26,142,577.09, and that it was constrained to execute the Letter-Waiver to facilitate payment.<sup>11</sup> On this basis, the Arbitral Tribunal declared the Letter-Waiver “inefficacious”.<sup>12</sup>

Based on the Daywork and Equipment Utilization Schedule RDC submitted as part of its bid documents for the project, the Arbitral Tribunal further held that: (i) bare rental rates were agreed upon; and (ii) only four (4) bulldozers were contracted for the project. Proceeding therefrom, the Arbitral Tribunal found that RDC’s total claim for idle time compensation amounts to ₱50,179,577.00, (*not* ₱93,782,093.64 as initially claimed), thus entitling it to recover additional compensation amounting to **₱22,409,500.00** (*not* ₱67,639,576.55 as prayed for in the CIAC Complaint), computed as follows:

x x x From June 24, 1997 to [February] 8, 2000, the period of work suspension is for a total of 32 months calculated at 25 operating days per month (excluding Sundays). Translated into hours, this equals 800 days total suspension.

800 working days [at] 8 operating hours per day = 6400 [hours]

Cost of Idle Time of Equipment:

Bulldozers[:]

4 units x 6400 x P 1,000.00 = P 25,600,000.00

Backhoes:

2 units x 6400 x P 900.00 = 11,520,000.00

Payloaders

2 units x 6400 x P 900.00 = 11,520,000.00  
P 48,640,000.00

**TOTAL VALUE OF CLAIMS**

A. Cost of Idle Time of Equipment	P 48,640,000.00
B. Equipment Yard Rental	112,000.00
C. Consultant’s Quarters	110,000.00
D. Contractor[?]s Staff House	69,000.00
E. Salary of Personnel	1,106,000.00
F. Performance Bond	<u>142,577.00</u>

TOTAL P 50,179,577.00

Less[:] Payment received 27,770,077.00

**BALANCE PAYABLE P 22,409,500.00<sup>13</sup>**

<sup>10</sup> Id. at 139.

<sup>11</sup> Id. at 123.

<sup>12</sup> Id. at 121.

<sup>13</sup> Id. at 130-131.

*DPWH's CA Petition*

The records show that sometime on September 11, 2008, DPWH filed with the CA a petition for review (DPWH's CA Petition) under Rule 43 seeking the reversal of the Arbitral Award. This petition was docketed as CA-G.R. SP No. 104920.

*RDC's First and Second CIAC MRs*

Meanwhile, RDC filed its First CIAC MR seeking reconsideration of the Arbitral Award. On December 8, 2008, the CIAC issued the First CIAC Order denying said motion for having been filed four (4) days beyond the reglementary period. Notably, the First CIAC Order was signed only by CIAC Chairman Alfredo Tadiar (Chairman Tadiar).<sup>14</sup>

Thereafter, RDC filed its Second CIAC MR, this time seeking reconsideration of the First CIAC Order, with a prayer for the partial execution of the Arbitral Award. This motion was also denied through the Second CIAC Order, which, again, only bore the signature of Chairman Tadiar.<sup>15</sup>

*RDC's CA Petition*

Aggrieved, RDC filed a petition for review before the CA *via* Rule 43 (RDC's CA Petition). Said petition, docketed as CA-G.R. SP No. 107412, was filed sometime in March 2009.<sup>16</sup> **Notably, RDC's CA Petition proceeded independent of DPWH's CA Petition, which had already been pending with another division of the same court.**<sup>17</sup>

RDC assailed the validity of the First and Second CIAC Orders, for while they were purportedly issued upon the authority of the Arbitral Tribunal, they were signed by only one (1) out of its three (3) members.<sup>18</sup> RDC also maintained that its First CIAC MR had been filed on time.<sup>19</sup>

In addition, RDC argued that the Arbitral Tribunal erred in: (i) applying bare rental rates instead of ACEL rates as basis for determining the amount of idle time compensation due; and (ii) awarding compensation for idle time corresponding to only four (4) bulldozers instead of five (5).<sup>20</sup> **Finally, RDC claimed that it is neither barred by laches nor estopped from demanding the balance of its original claim of ₱93,782,093.64,**

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<sup>14</sup> See *id.* at 78-79.

<sup>15</sup> See *id.* at 79-80.

<sup>16</sup> Exact date of filing cannot be ascertained from the records.

<sup>17</sup> See *rollo*, p. 485.

<sup>18</sup> See *id.* at 80-81.

<sup>19</sup> See *id.* at 80.

<sup>20</sup> *Id.* at 81.



**insisting that it was merely constrained to execute the Letter-Waiver due to financial distress.**<sup>21</sup>

In its Comment, DPWH averred, among others, that motions for reconsideration and new trial constitute prohibited pleadings under Sections 17.1 and 17.2 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Revised Rules).<sup>22</sup>

DPWH further argued that RDC should not be allowed to seek additional compensation for idle time in view of the Letter-Waiver. Assuming that such waiver cannot be enforced, DPWH asserted that RDC's claim remains barred pursuant to the principle of laches and estoppel.<sup>23</sup>

#### *Assailed Decision and Resolution*

On April 26, 2011, the CA Special 17<sup>th</sup> Division issued the assailed Decision granting RDC's CA Petition. The dispositive portion of the assailed Decision reads:

**WHEREFORE**, the Arbitral Award dated July 17, 2008 in CIAC Case No. 05-2008 is **AFFIRMED with MODIFICATION requiring the [DPWH] to pay [RDC] the sum of P61,748,346.00 representing the balance of compensation for idle time of equipment.** Interest on the foregoing amount shall be paid at the rate of 6% per annum from the date of this Decision. After finality hereof, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made.

The [First and Second CIAC Orders] are **SET ASIDE** for not bearing the signatures of the two other members of the Arbitral Tribunal.

**SO ORDERED.**<sup>24</sup> (Emphasis supplied)

The CA Special 17<sup>th</sup> Division held that while RDC's First CIAC MR is captioned as such, it was actually in the nature of a motion for correction of final award, as it merely prayed for a "mathematical correction" of the Arbitral Award granted in its favor.<sup>25</sup>

With regard to the timeliness of the First CIAC MR, the CA Special 17<sup>th</sup> Division noted that the discrepancy between the date of receipt appearing on the return card (*i.e.*, August 7, 2008) and that appearing on the copy of the Arbitral Award served upon RDC's counsel (*i.e.*, August 8, 2008) and held that "[w]here one date precludes [RDC's] right to file a motion for reconsideration, and another allows it to pursue such remedy, in the absence of a categorical finding on which of the two dates is correct, [the

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<sup>21</sup> See *id.*

<sup>22</sup> *Id.* at 85.

<sup>23</sup> See *id.* at 89, 94.

<sup>24</sup> *Id.* at 105.

<sup>25</sup> See *id.* at 85-87.



CA Special 17<sup>th</sup> Division] upholds the second date consistent with the tenets of due process.”<sup>26</sup>

In any case, the CA Special 17<sup>th</sup> Division held that absent the signatures of Atty. Custodio Parlade (Atty. Parlade) and Ms. Felicitas Pio Roda (Ms. Roda), the First and Second CIAC Orders denying RDC’s motions should be deemed inefficacious. Citing Sections 16.2 and 17.1 of the CIAC Revised Rules,<sup>27</sup> the CA Special 17<sup>th</sup> Division ruled that Chairman Tadiar was bereft of any authority to issue orders on the Arbitral Tribunal’s behalf without the imprimatur of his co-members Atty. Parlade and Ms. Roda.<sup>28</sup>

DPWH<sup>29</sup> filed a motion for reconsideration, which was denied through the assailed Resolution.<sup>30</sup>

Based on the records, DPWH received the assailed Resolution on December 21, 2011.<sup>31</sup>

On January 3, 2012, DPWH filed a motion for extension,<sup>32</sup> seeking an additional period of thirty (30) days from January 5, 2012, or until February 4, 2012, within which to file its petition for review.

DPWH filed the present Petition on February 6, 2012.<sup>33</sup>

<sup>26</sup> Id. at 87.

<sup>27</sup> Sections 16.2 and 17.1 of the CIAC Revised Rules read:

**SECTION 16.2 *Form of award*** - The Final award shall be in writing and signed by the Arbitral Tribunal *or a majority of its members*. A dissent from the decision of the majority or a portion thereof shall be in writing *specifying the portion/s dissented from with a statement of the reason/s thereof* and signed by the dissenting member.

x x x x

**SECTION 17.1 *Motion for correction of final award*** - Any of the parties may file a motion for correction of the Final award within fifteen (15) days from receipt thereof upon any of the following grounds:

- a. an evident miscalculation of figures, a typographical or arithmetical error;
- b. an evident mistake in the description of any party, person, date, amount, thing or property referred to in the award.
- c. where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;
- d. *where the arbitrators have failed or omitted to resolve certain issue/s formulated by the parties in the Terms of Reference (TOR) and submitted to them for resolution; and*
- e. where the award is imperfect in a matter of form not affecting the merits of the controversy.

*The motion shall be acted upon by the Arbitral Tribunal or the surviving/remaining members.*

<sup>28</sup> *Rollo*, p. 84.

<sup>29</sup> Through the Office of the Solicitor General (OSG).

<sup>30</sup> *Rollo*, pp. 107-109.

<sup>31</sup> Id. at 2.

<sup>32</sup> Id. at 2-6.

<sup>33</sup> See id. at 11.

In the Resolution<sup>34</sup> dated February 27, 2012, the Court directed RDC to file a comment on the Petition within ten (10) days from notice. On August 15, 2012, the Court required RDC's counsel, Atty. Roehl M. Galandines (Atty. Galandines), to show cause why he should not be dealt a disciplinary action for failing to comply with said directive.<sup>35</sup> On January 11, 2013, Atty. Galandines filed a Manifestation<sup>36</sup> in response to the Court's show cause order. Said Manifestation was coupled with a motion to admit the Comment<sup>37</sup> attached thereto.

DPWH filed its Reply<sup>38</sup> to RDC's Comment on September 30, 2013.

### *The Issue*

The sole issue for the Court's resolution is whether the CA Special 17<sup>th</sup> Division erred when it directed DPWH to pay RDC additional compensation amounting to ₱61,748,346.00, representing the difference between its original claim, and the payment it previously accepted from DPWH under the Letter-Waiver.

### *The Court's Ruling*

The Petition is meritorious.

On October 29, 2010, or months *prior* to the issuance of the assailed Decision, the CA 7<sup>th</sup> Division already issued its own Decision<sup>39</sup> granting DPWH's CA Petition, thus:

**IN VIEW OF THE FOREGOING**, the instant Petition is **GRANTED**. The assailed Arbitral Award rendered by the Arbitral Tribunal of the CIAC on August 6, 2008 is **REVERSED** and **SET ASIDE**.

**SO ORDERED.**<sup>40</sup>

RDC filed a motion for reconsideration, which was denied by the CA 7<sup>th</sup> Division on July 5, 2011.<sup>41</sup> This denial was no longer appealed by RDC. **Hence, the Decision of the CA 7<sup>th</sup> Division became final.**<sup>42</sup>

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<sup>34</sup> Id. at 647.

<sup>35</sup> Id. at 651.

<sup>36</sup> Id. at 653-656.

<sup>37</sup> Id. at 657-680.

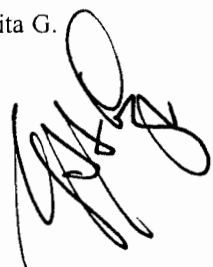
<sup>38</sup> Id. at 686-690.

<sup>39</sup> Id. at 485-513. Penned by Associate Justice Ruben C. Ayson, with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro concurring.

<sup>40</sup> Id. at 513.

<sup>41</sup> Id. at 524-525. Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Amelita G. Tolentino and Jane Aurora C. Lantion concurring.

<sup>42</sup> Id. at 687, 691-692.





Despite the outcome of DPWH's CA Petition, the CA Special 17<sup>th</sup> Division and Former Special 17<sup>th</sup> Division *later* issued the herein assailed Decision and Resolution granting RDC's CA Petition and essentially reversing those rendered by their co-equal division. **For reasons unknown to the Court, the assailed Decision and Resolution failed to refer to the resolution of DPWH's CA Petition, despite the identity of issues and parties involved.**

The resolution of the parties' separate CA petitions can be summarized, thus:

Date	Case	Issuance	Disposition
October 29, 2010	DPWH's CA Petition – 7 <sup>th</sup> Division	Decision	Grant DPWH's CA Petition
April 26, 2011	RDC's CA Petition – Special 17 <sup>th</sup> Division	Decision	Grant RDC's CA Petition
July 5, 2011	DPWH's CA Petition – Special Former 7 <sup>th</sup> Division	Resolution	Deny RDC's motion for reconsideration
December 14, 2011	RDC's CA Petition – Former Special 17 <sup>th</sup> Division	Resolution	Deny DPWH's motion for reconsideration

*Res judicata* is commonly understood as a bar to the prosecution of a second action upon the same claim, demand or cause of action.<sup>43</sup> The principle of *res judicata* precludes the re-litigation of a conclusively settled fact or question in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action.<sup>44</sup>

For the principle to apply: (i) the issue or fact sought to be precluded must be identical to the issue or fact actually determined in a former suit; (ii) the party to be precluded must be party to or was in privity with a party to the former proceeding; (iii) there was final judgment on the merits in the former proceedings; and (iv) in compliance with the basic tenet of due process, that the party against whom the principle is asserted must have had full and fair opportunity to litigate issues in the prior proceedings.<sup>45</sup>

All the foregoing requisites are present.

As between CA-G.R. SP No. 104920 (DPWH's CA Petition) and CA-G.R. SP No. 107412 (RDC's CA Petition) which has given rise to the present case, there is an identity of facts, issues and parties. There is likewise no allegation on the part of RDC that it had been deprived of a fair and full opportunity to litigate the issues in CA-G.R. SP No. 104920. That

<sup>43</sup> *Ching v. San Pedro College of Business Administration*, 772 Phil. 214, 226-227 (2015).

<sup>44</sup> *Id.* at 228-229.

<sup>45</sup> *Id.* at 229.

due process had been afforded both parties is evident from the CA 7<sup>th</sup> Division's Decision which exhaustively resolved the substantive issues in dispute:

x x x [RDC] registered no objection to the payment of the reduced amount only to subsequently retract the waiver it earlier executed on the alleged ground that [DPWH] exerted undue influence over it.

Under Article 1337 of the New Civil Code, there is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant, or in financial distress.

[RDC] offered as evidence submitted with the Arbitral Tribunal of the CIAC financial statements pertaining to fiscal years 2004 to 2006 to prove its state of financial distress when it accepted [DPWH's] payment. [RDC] further claimed that by reason of its financial condition then and the fact that its money claims had been pending since 2001, just so it can collect, it was constrained to execute the waiver in November 14, 2006 as per [DWPH's] demand.

It is a jurisprudential doctrine that for undue influence to be present, the influence exerted must have so overpowered or subjugated the mind of a contracting party as to destroy the latter's free agency, making such party express the will of another rather than its own. The alleged lingering financial woes of a debtor *per se* cannot be equated with the presence of undue influence.

The concept is amplified by the renowned jurist, Arturo Tolentino who explained that "*undue influence is any means employed upon a party which, under the circumstances, he could not well resist, and which controlled his volition and induced him to give his consent to the contract, which otherwise he would not have entered into. It must, in some measure, destroy the free agency of a party and interfere with the exercise of that independent discretion which is necessary for determining the advantage or disadvantage of a proposed contract. In every such case, there is moral coercion. The moral coercion may be effected through threats, expressed or implied, or through harassing tactics.*" x x x

It bears stressing that [RDC] is an independent contractor, which x x x had the capacity to engage [in] multi-million construction projects. It defies logic to believe that it agreed to execute the [Letter-Waiver] without knowing the consequences of its actions. It likewise does not inspire belief that [RDC] was morally coerced to execute the [Letter-Waiver]. As enunciated above, the incidence of financial woes *per se* cannot be equated with the presence of undue influence in the absence of [proof] of specific acts indicating that a party's free agency had been destroyed by another. x x x<sup>46</sup>

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<sup>46</sup> Rollo, pp. 508-510.



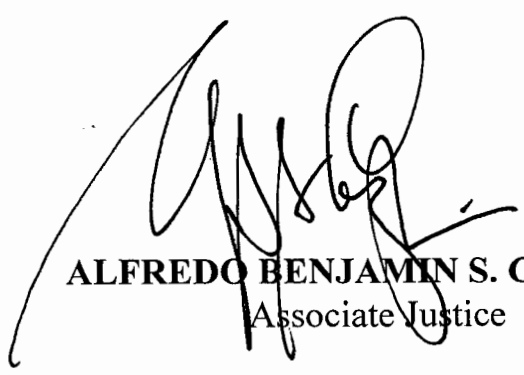
It bears emphasizing that the foregoing Decision rendered by the CA 7<sup>th</sup> Division in CA-G.R. SP No. 104920 had become final on July 30, 2011, during the pendency of DPWH's Motion for Reconsideration in CA-G.R. SP No. 107412, which the CA Special 17<sup>th</sup> Division later denied through the assailed Resolution. **Thus, there was, at the time of the issuance of the assailed Resolution, already a final judgment on the merits concerning the very same facts, issues and parties — a judgment which could not have been disturbed, let alone reversed, by a co-equal division of the same court.**

The Court notes that the existence of the conflicting division decisions appears to have resulted from the failure of RDC's counsel to make the necessary disclosures regarding the identity of parties and issues in CA-G.R. SP No. 104920 and CA-G.R. SP No. 107412.<sup>47</sup>

**WHEREFORE**, premises considered, the Petition is **GRANTED**. The Decision and Resolution respectively dated April 26, 2011 and December 14, 2011 rendered by the Court of Appeals, Special Seventeenth Division and Former Special Seventeenth Division, respectively, in CA-G.R. SP No. 107412 are **REVERSED and SET ASIDE**.

Atty. Roehl M. Galandines, counsel for respondent Roguza Development Corporation, is **DIRECTED** to **SHOW CAUSE** why no disciplinary action should be taken against him, in view of his failure to disclose the pendency of CA-G.R. SP No. 104920 upon the filing of his client's petition for review before the Court of Appeals.

**SO ORDERED.**




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>47</sup> DPWH disclosed the incidents of CA-G.R. SP No. 104920 in its Comment dated September 18, 2009 filed in CA-G.R. SP No. 107412. See id. at 592-593.

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

(On wellness leave)  
**JOSE C. REYES, JR.**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

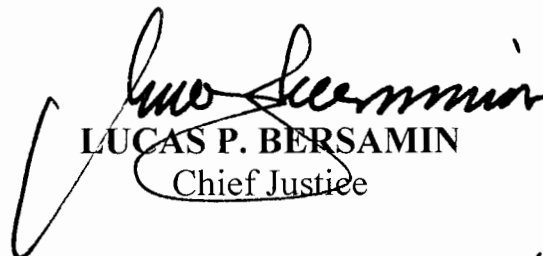
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

  
**LUCAS P. BERSAMIN**  
Chief Justice

