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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

KEIHIN-EVERETT FORWARDING CO., INC., Petitioner,	**G.R. No. 212107**
	Present:
-versus -	CARPIO, *J.*, *Chairperson,* PERLAS-BERNABE, CAGUIOA, REYES, J. JR., and HERNANDO,* *JJ.*
TOKIO MARINE MALAYAN INSURANCE CO., INC.[**] **and SUNFREIGHT FORWARDERS & CUSTOMS BROKERAGE, INC.,** Respondents.	**Promulgated:** 28 JAN 2019

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DECISION

REYES, J. JR., *J.*:

The Case

Keihin-Everett Forwarding Co., Inc. (Keihin-Everett) appealed from the April 8, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 98672 which held it liable to pay Tokio Marine Malayan Insurance Co., Inc.'s (Tokio Marine's) claim of ₱1,589,556.60 with right of reimbursement from Sunfreight Forwarders & Customs Brokerage, Inc. (Sunfreight Forwarders).

** Now known as "Malayan Insurance Company, Inc."

* Additional Member per S.O. No. 2630 dated December 18, 2018.

1 Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring; *rollo*, pp. 34-45.

The Facts

The facts, as summarized by the CA,[2] are clear and undisputed.

In 2005, Honda Trading Phils. Ecozone Corporation (Honda Trading) ordered 80 bundles of Aluminum Alloy Ingots from PT Molten Aluminum Producer Indonesia (PT Molten).[3] PT Molten loaded the goods in two container vans with Serial Nos. TEXU 389360-5 and GATU 040516-3 which were, in turn, received in Jakarta, Indonesia by Nippon Express Co., Ltd. for shipment to Manila.[4]

Aside from insuring the entire shipment with Tokio Marine & Nichido Fire Insurance Co., Inc. (TMNFIC) under Policy No. 83-00143689, Honda Trading also engaged the services of petitioner Keihin-Everett to clear and withdraw the cargo from the pier and to transport and deliver the same to its warehouse at the Laguna Technopark in Biñan, Laguna.[5] Meanwhile, petitioner Keihin-Everett had an Accreditation Agreement with respondent Sunfreight Forwarders whereby the latter undertook to render common carrier services for the former and to transport inland goods within the Philippines.[6]

The shipment arrived in Manila on November 3, 2005 and was, accordingly, offloaded from the ocean liner and temporarily stored at the CY Area of the Manila International Port pending release by the Customs Authority.[7] On November 8, 2005, the shipment was caused to be released from the pier by petitioner Keihin-Everett and turned over to respondent Sunfreight Forwarders for delivery to Honda Trading.[8] En route to the latter's warehouse, the truck carrying the containers was hijacked and the container van with Serial No. TEXU 389360-5 was reportedly taken away.[9] Although said container van was subsequently found in the vicinity of the Manila North Cemetery and later towed to the compound of the Metro Manila Development Authority (MMDA), it appears that the contents thereof were no longer retrieved.[10] Only the container van with Serial No. GATU 040516-3 reached the warehouse. As a consequence, Honda Trading suffered losses in the total amount of ₱2,121,917.04, representing the value of the lost 40 bundles of Aluminum Alloy Ingots.[11]

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2 Id. at 35-37.
3 Id. at 35.
4 Id.
5 Id.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id.
11 Id. at 35-36.

Claiming to have paid Honda Trading's insurance claim for the loss it suffered, respondent Tokio Marine commenced the instant suit on October 10, 2006 with the filing of its complaint for damages against petitioner Keihin-Everett. Respondent Tokio Marine maintained that it had been subrogated to all the rights and causes of action pertaining to Honda Trading.

Served with summons, petitioner Keihin-Everett denied liability for the lost shipment on the ground that the loss thereof occurred while the same was in the possession of respondent Sunfreight Forwarders.[12] Hence, petitioner Keihin-Everett filed a third-party complaint against the latter, who, in turn, denied liability on the ground that it was not privy to the contract between Keihin-Everett and Honda Trading. If at all, respondent Sunfreight Forwarders claimed that its liability cannot exceed the ₱500,000.00 fixed in its Accreditation Agreement with petitioner Keihin-Everett.[13]

Ruling of the RTC

On October 27, 2011, the RTC rendered a Decision finding petitioner Keihin-Everett and respondent Sunfreight Forwarders jointly and severally liable to pay respondent Tokio Marine's claim in the sum of ₱1,589,556.60, together with the legal interest due thereon and attorney's fees amounting to ₱100,000.00. The RTC found the driver of Sunfreight Forwarders as the cause of the evil caused. Under Article 2180 of the Civil Code, it provides: "Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." Thus, Sunfreight Forwarders is hereby held liable for the loss of the subject cargoes with Keihin-Everett, being a common carrier. In case, Keihin-Everett pays for the amount, it has a right of reimbursement from Sunfreight Forwarders. It ruled:

> In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible, unless they can prove that the loss, destruction or deterioration was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, they are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence (*Aboitiz Shipping Corporation v. [New] India Assurance Company, Ltd.*, G.R. No. 156978, August 24, 2007). And, hijacking of [a] carrier's truck is not one of those included as exempting circumstance under Art. 1374 (*De Guzman v. Court of Appeals*, 168 SCRA 612). Thus, [Keihin-Everett] and [Sunfreight Forwarders] are crystal clear liable for the loss of the subject cargo.[14]

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12 Id. at 36.
13 Id.
14 Id. at 37.

Keihin-Everett moved for reconsideration of the foregoing RTC Decision. However, its motion was denied for lack of merit by the RTC in its Order dated March 8, 2012. Hence, Keihin-Everett filed an appeal with the CA.

Ruling of the CA

In the now appealed Decision dated April 8, 2014, the CA modified the ruling of the RTC insofar as the solidary liability of Keihin-Everett and Sunfreight Forwarders is concerned. The CA went to rule that solidarity is never presumed. There is solidary liability when the obligation so states, or when the law or the nature of the obligation requires the same. Thus, because of the lack of privity between Honda Trading and Sunfreight Forwarders, the latter cannot simply be held jointly and severally liable with Keihin-Everett for Tokio Marine's claim as subrogee. In view of the Accreditation Agreement between Keihin-Everett and Sunfreight Forwarders, the former possesses a right of reimbursement against the latter for so much of what Keihin-Everett has paid to Tokio Marine. The dispositive portion of the CA Decision reads as follows:

> WHEREFORE, premises considered, the appealed October 27, 2011 Decision is MODIFIED to hold Keihin-Everett liable for Tokio Marine's claim in the sum of ₱1,589,556.60, with right of reimbursement from Sunfreight Forwarders. Keihin-Everett is likewise found solely liable for the attorney's fees the RTC awarded in favor of Tokio Marine. The rest is AFFIRMED *in toto*.
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> SO ORDERED.[15]

Dissatisfied with the CA Decision, petitioner Keihin-Everett filed the instant petition with this Court.

The Issue

The main issue for consideration is whether or not the CA erred in affirming with modification the Decision of the RTC dated October 27, 2011 holding petitioner Keihin-Everett liable to respondent Tokio Marine.

Petitioner Keihin-Everett ascribed errors on the part of the CA (a) in considering the documents presented at the trial even if the same were not attached and made integral parts of the complaint in violation of Section 7, Rule 8 of the Rules of Court; (b) in upholding the RTC's failure to dismiss the complaint albeit the plaintiff is not the real party in interest and has no capacity to sue; (c) in ruling that there was legal subrogation; and (d) in affirming the petitioner's liability despite overwhelming evidence showing

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[15] Id. at 44.

that the damaged cargoes were in the custody of Sunfreight Forwarders at the time they were lost.[16]

Ruling

Keihin-Everett's arguments will be resolved *in seriatim.*

First. Keihin-Everett argued that the case should have been dismissed for failure of Tokio Marine to attach or state in the Complaint the actionable document or the insurance policy between the insurer and the insured, in clear violation of Section 7, Rule 8 of the 1997 Rules of Court, which states:

> SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

It bears to stress that failure of Tokio Marine to attach in the Complaint the contract of insurance between the insurer (Tokio Marine) and the insured (Honda Trading) is not fatal to its cause of action.

True, in the case of *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*[17] relied upon by Keihin-Everett, the Court makes it imperative for the plaintiff (whose action is predicated upon his right as a subrogee) to attach the insurance contract in the complaint in accordance with Section 7, Rule 8 of the 1997 Rules of Court, just so in order to establish the legal basis of the right to subrogation. The Court ratiocinated:

> Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.
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> Our procedural rules make plain how easily Malayan could have adduced the Marine Insurance Policy. Ideally, this should have been accomplished from the moment it filed the complaint. Since the Marine Insurance Policy was constitutive of the insurer-insured relationship from which Malayan draws its right to subrogation, such document should have

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16 Id. at 14.

17 563 Phil. 1003 (2007).

> been attached to the complaint itself, as provided for in Section 7, Rule 8 of the 1997 Rules of Civil Procedure.[18]

However, in the aforesaid case, the Court did not suggest an outright dismissal of a complaint in case of failure to attach the insurance contract in the complaint. Promoting a reasonable construction of the rules so as not to work injustice, the Court makes it clear that failure to comply with the rules does not preclude the plaintiff to offer it as evidence. Thus:

> It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document in the event a party fails to comply with the requirement of the rule on actionable documents under Section 7, Rule 8.[19]

Unfortunately, in the *Malayan* case cited by Keihin-Everett, Malayan not only failed to attach or set forth in the complaint the insurance policy, it likewise did not present the same as evidence before the trial court or even in the CA. As the Court metaphorically described, the very insurance contract emerges as the white elephant in the room — an obdurate presence which everybody reacts to, yet legally invisible as a matter of evidence since no attempt had been made to prove its corporeal existence in the court of law.[20] Hence, there was sufficient reason for the Court to dismiss the case for it has no legal basis from which to consider the pre-existence of an insurance contract between Malayan and ABB Koppel and the former's right of subrogation.

The instant case cannot be dismissed just like that. Unlike in the *Malayan* case, Tokio Marine presented as evidence, not only the Honda Trading Insurance Policy, but also the Subrogation Receipt evidencing that it paid Honda Trading the sum of US$38,855.83 in full settlement of the latter's claim under Policy No. 83-00143689. During the trial, Keihin-Everett even had the opportunity to examine the said documents and conducted a cross-examination of the said Contract of Insurance.[21] By presenting the insurance policy constitutive of the insurance relationship of the parties, Tokio Marine was able to confirm its legal right to recover as subrogee of Honda Trading.

Second. Keihin-Everett insisted that Tokio Marine is not the insurer but TMNFIC, hence, it argued that Tokio Marine has no right to institute the present action. As it pointed out, the Insurance Policy shows in its face that Honda Trading procured the insurance from TMNFIC and not from Tokio Marine.

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18 Id. at 1016.
19 Id. at 1017.
20 Id. at 1018.
21 *Rollo*, p. 36.

While this assertion is true, Insurance Policy No. 83-00143689 itself expressly made Tokio Marine as the party liable to pay the insurance claim of Honda Trading pursuant to the Agency Agreement entered into by and between Tokio Marine and TMNFIC. As properly appreciated by both the RTC and the CA, the Agency Agreement shows that TMNFIC had subsequently changed its name to that of Tokio Marine.[22] By agreeing to this stipulation in the Insurance Policy, Honda Trading binds itself to file its claim from Tokio Marine and thereafter to accept payment from it.

At any rate, even if we consider Tokio Marine as a third person who voluntarily paid the insurance claims of Honda Trading, it is still entitled to be reimbursed of what it had paid. As held by this Court in the case of *Pan Malayan Insurance Corp. v. Court of Appeals,*[23] the insurer who may have no rights of subrogation due to "voluntary" payment may nevertheless recover from the third party responsible for the damage to the insured property under Article 1236[24] of the Civil Code. Under this circumstance, Tokio Marine's right to sue is based on the fact that it voluntarily made payment in favor of Honda Trading and it could go after the third party responsible for the loss (Keihin-Everett) in the exercise of its legal right of subrogation.

Setting aside this assumption, Tokio Marine nonetheless was able to prove by the following documentary evidence, such as Insurance Policy, Agency Agreement and Subrogation Receipt, their right to institute this action as subrogee of the insured. Keihin-Everett, on the other hand, did not present any evidence to contradict Tokio Marine's case.

Third. Since the insurance claim for the loss sustained by the insured shipment was paid by Tokio Marine as proven by the Subrogation Receipt – showing the amount paid and the acceptance made by Honda Trading, it is inevitable that it is entitled, as a matter of course, to exercise its legal right to subrogation as provided under Article 2207 of the Civil Code as follows:

> Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the

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22 CA Decision; *rollo,* p. 40.

23 262 Phil. 919 (1990).

24 Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

> insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

It must be stressed that the Subrogation Receipt only proves the fact of payment. This fact of payment grants Tokio Marine subrogatory right which enables it to exercise legal remedies that would otherwise be available to Honda Trading as owner of the hijacked cargoes as against the common carrier (Keihin-Everett). In other words, the right of subrogation accrues simply upon payment by the insurance company of the insurance claim.[25] As the Court held:

> The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.[26]

Indeed, the right of subrogation has its roots in equity.[27] It is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice and good conscience, ought to pay.[28] Consequently, the payment made by Tokio Marine to Honda Trading operates as an equitable assignment to the former of all the remedies which the latter may have against Keihin-Everett.

Finally. Keihin-Everett maintained that at the time when the cargoes were lost, it was already in the custody of Sunfreight Forwarders. Notwithstanding that the cargoes were in the possession of Sunfreight Forwarders when they were hijacked, Keihin-Everett is not absolved from its liability as a common carrier. Keihin-Everett seems to have overlooked that it was the one whose services were engaged by Honda Trading to clear and withdraw the cargoes from the pier and to transport and deliver the same to its warehouse. In turn, Keihin-Everett accredited Sunfreight Forwarders to render common carrier service for it by transporting inland goods. As correctly held by the CA, there was no privity of contract between Honda Trading (to whose rights Tokio Marine was subrogated) and Sunfreight Forwarders. Hence, Keihin-Everett, as the common carrier, remained responsible to Honda Trading for the lost cargoes.

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25 *Delsan Transport Lines, Inc. v. Court of Appeals*, 420 Phil. 824, 832 (2001).

26 *Equitable Insurance Corp v. Transmodal International, Inc.*, G.R. No. 223592, August 7, 2017, 834 SCRA 581, 592-593.

27 *Delsan Transport Lines, Inc. v. Court of* Appeals, supra note 25.

28 Id.

In this light, Keihin-Everett, as a common carrier, is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, *unless it proves that it observed extraordinary diligence.*[29] To be sure, under Article 1736 of the Civil Code, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, until they are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. Hence, at the time Keihin-Everett turned over the custody of the cargoes to Sunfreight Forwarders for inland transportation, it is still required to observe extraordinary diligence in the vigilance of the goods. Failure to successfully establish this carries with it the presumption of fault or negligence, thus, rendering Keihin-Everett liable to Honda Trading for breach of contract.

It bears to stress that the hijacking of the goods is not considered a fortuitous event or a *force majeure.*[30] Nevertheless, a common carrier may absolve itself of liability for a resulting loss caused by robbery or hijacked if it is proven that the robbery or hijacking was attended by grave or irresistible threat, violence or force.[31] In this case, Keihin-Everett failed to prove the existence of the aforementioned instances.

We likewise agree with the CA that the liability of Keihin-Everett and Sunfreight Forwarders are not solidary. There is solidary liability only when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires.[32] Thus, under Article 2194 of the Civil Code, liability of two or more persons is solidary in *quasi-delicts*. But in this case, Keihin-Everett's liability to Honda Trading (to which Tokio Marine had been subrogated as an insurer) stemmed not from *quasi-delict*, but from its breach of contract of carriage. Sunfreight Forwarders was only impleaded in the case when Keihin-Everett filed a third-party complaint against it. As mentioned earlier, there was no direct contractual relationship between Sunfreight Forwarders and Honda Trading. Accordingly, there was no basis to directly hold Sunfreight Forwarders liable to Honda Trading for breach of contract. If at all, Honda Trading can hold Sunfreight Forwarders for *quasi-delict,*[33] which is not the action filed in the instant case.

It is not expected however that Keihin-Everett must shoulder the entire loss. The case of *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.*[34] is instructive. The said case involves a similar

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29 *A.F. Sanchez Brokerage, Inc. v. Court of Appeals*, 488 Phil. 430, 441 (2004).
30 *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.*, 789 Phil. 413, 424 (2016).
31 *De Guzman v. Court of Appeals*, 250 Phil. 613, 622 (1988).
32 *Malayan Insurance Co., Inc. v. Philippines First Insurance Co., Inc.*, 690 Phil. 621, 638 (2012).
33 *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.*, supra note 30, at 427.
34 Id.

set of facts as that of the instant case such that the shipper (Sony) engaged the services of common carrier (TMBI), to facilitate the release of its shipment and deliver the goods to its warehouse, who, in turn, subcontracted a portion of its obligation to another common carrier (BMT). The Court ruled:

> We do not hereby say that TMBI must absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier.
>
> The cargo was lost after its transfer to BMT's custody based on its contract of carriage with TMBI. Following Article 1735, BMT is presumed to be at fault. Since BMT failed to prove that it observed *extraordinary diligence* in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage.
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> In these lights, TMBI is liable to Sony (subrogated by Mitsui) for breaching the contract of carriage. In turn, TMBI is entitled to reimbursement from BMT due to the latter's own breach of its contract of carriage with TMBI. x x x[35]

In the same manner, Keihin-Everett has a right to be reimbursed based on its Accreditation Agreement with Sunfreight Forwarders. By accrediting Sunfreight Forwarders to render common carrier services to it, Keihin-Everett in effect entered into a contract of carriage with a fellow common carrier, Sunfreight Forwarders.

It is undisputed that the cargoes were lost when they were in the custody of Sunfreight Forwarders. Hence, under Article 1735[36] of the Civil Code, the presumption of fault on the part of Sunfreight Forwarders (as common carrier) arose. Since Sunfreight Forwarders failed to prove that it observed extraordinary diligence in the performance of its obligation to Keihin-Everett, it is liable to the latter for breach of contract. Consequently, Keihin-Everett is entitled to be reimbursed by Sunfreight Forwarders due to the latter's own breach occasioned by the loss and damage to the cargoes under its care and custody. As with the cited *Torres-Madrid Brokerage* case, Sunfreight Forwarders, too, has the option to absorb the loss or to proceed after its missing driver, the suspect in the hijacking incident.[37]

As to the award of attorney's fees, the same is likewise in order as Tokio Marine was clearly compelled to litigate to protect its interest.[38] Attorney's fees are allowed in the discretion of the court after considering several factors which are discernible from the facts brought out during the

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35 Id. at 428.

36 Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733.

37 *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.*, supra note 30, at 428.

38 CIVIL CODE, Article 2208 (2).

trial.[39] In this case, Tokio Marine was compelled to litigate brought about by Keihin-Everett's obstinate refusal to pay the former's valid claim.

WHEREFORE, the Decision dated April 8, 2014 of the Court of Appeals in CA-G.R.No. CV No. 98672 is **AFFIRMED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

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39 *Philippine Rabbit Bus Lines, Inc. v. Esguerra*, 203 Phil 107, 112 (1982).

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
Senior 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