



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

TERESITA S. LAZARO, DENNIS S. LAZARO, MARIETA V. JARA, ANTONIO P. RELOVA, GILBERTO R. MONDEZ, PABLO V. DEL MUNDO, JR., AND ALSANEO F. LAGOS,  
Petitioners,

G.R. No. 213323;

-versus-

and

COMMISSION ON AUDIT,  
REGIONAL DIRECTOR OF COA  
REGIONAL OFFICE NO. IV-A,  
AND COA AUDIT TEAM  
LEADER, PROVINCE OF  
LAGUNA,

Respondents;

X-----X  
EVELYN T. VILLANUEVA,  
Provincial Accountant of the  
Province of Laguna,  
Petitioner,

X-----X  
G.R. No. 213324

Present:

BERSAMIN, *J.*, Chief Justice,  
CARPIO,  
PERALTA,  
DEL CASTILLO,  
PERLAS-BERNABE,  
LEONEN,  
JARDELEZA,  
CAGUIOA,  
REYES, A., JR.,  
GESMUNDO,  
REYES, J., JR.,  
HERNANDO, and  
CARANDANG, *JJ.*

-versus-

COMMISSION ON AUDIT,  
Respondent.

Promulgated:  
January 22, 2019

X-----X

**DECISION****LEONEN, J.:**

These are Petitions for Certiorari<sup>1</sup> under Rule 64 of the Rules of Court, assailing the August 17, 2011 Decision<sup>2</sup> and May 6, 2014 Resolution<sup>3</sup> of the Commission on Audit, which reversed the March 19, 2010 Decision<sup>4</sup> of the Commission on Audit Regional Office No. IV (Regional Office). In its Decision, the Regional Office reversed the Decision of the then Regional Cluster Director of the Commission on Audit, Regional Legal and Adjudication Office, which, in turn, disallowed the Provincial Government of Laguna's purchase of medicines, medical and dental supplies, and equipment (medical items) in the total amount of ₱118,039,493.46.<sup>5</sup>

As reported in a December 3, 2004 article of the Philippine Daily Inquirer, the Regional Director of the Regional Office created an audit team to conduct a preliminary fact-finding audit and investigation of irregularities in the purchase of medical items.<sup>6</sup>

The audit team issued two (2) Audit Observation Memoranda,<sup>7</sup> which revealed that in the 2004 and 2005 procurement of medical items: (1) no public bidding had been conducted; (2) purchase requests had made reference to brand names; and (3) there had been splitting of purchase requests and purchase orders.<sup>8</sup>

On December 27, 2006, the Regional Cluster Director issued a Notice of Disallowance,<sup>9</sup> which held liable for the 2004 and 2005 procurement of medical items worth ₱118,039,493.46 the following individuals: (1) Governor Teresita S. Lazaro (Governor Lazaro); (2) Officer-in-Charge Provincial Accountant Evelyn T. Villanueva (Villanueva); (3) Provincial Administrator and Bids and Awards Committee Chairman Dennis S. Lazaro (Dennis

<sup>1</sup> *Rollo* (G.R. No. 213323), pp. 3–27 and *rollo* (G.R. No. 213324), pp. 3–22.

<sup>2</sup> *Rollo* (G.R. No. 213324), pp. 23–32. The Decision was penned by Commissioner Ma. Gracia M. Pulido Tan and concurred in by Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza of the Commission on Audit, Quezon City.

<sup>3</sup> *Id.* at 33. The Notice of Resolution was signed by Commission Secretary and Director IV Nilda B. Plaras of the Commission on Audit, Quezon City.

<sup>4</sup> *Id.* at 77–82. The Decision was penned by Regional Director Leonardo L. Jamoralin of the Regional Office No. IV, Commission on Audit, Quezon City.

<sup>5</sup> *Id.* at 78.

<sup>6</sup> *Id.* at 23.

<sup>7</sup> *Id.* at 35–42.

<sup>8</sup> *Id.* at 23–24.

<sup>9</sup> *Id.* at 43–44.

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Lazaro); (4) Provincial Health Officer II Alsaneo F. Lagos (Lagos); (5) Provincial Budget Officer and Bids and Awards Committee Vice Chairman Marieta V. Jara (Jara); (6) Provincial Attorney Antonio P. Relova (Relova); (7) Provincial Engineer Gilberto R. Mondez (Mondez); and (8) General Services Office Officer-in-Charge Pablo V. Del Mundo, Jr. (Del Mundo). Relova, Mondez, and Del Mundo are Bids and Awards Committee members.<sup>10</sup>

The Notice of Disallowance indicated that: (1) the medical items were purchased without public bidding; and (2) reference to brand names were made in the procurement documents to justify the resort to exclusive distributorship, contrary to Section 18 of Republic Act No. 9184.<sup>11</sup>

On April 30, 2007, Governor Lazaro filed a Motion for Reconsideration of the Notice of Disallowance. However, it was denied in the Regional Cluster Director's March 25, 2008 Decision.<sup>12</sup>

On May 27, 2008, Governor Lazaro and the rest of the persons held liable filed an Appeal Memorandum to the Notice of Disallowance.<sup>13</sup>

In his March 19, 2010 Decision, the Regional Office granted their appeal. It held:

While this is the letter of the law, it bears emphasizing that no less than the Supreme Court admits of exceptions to the provisions of law above cited. In affirming the respect accorded to the exercise by administrative agencies of discretion whenever reference to brand names and the consequential resort to negotiated purchase are made, the Court, in the precedent-setting pronouncement in *National Center for Mental Health (NCMH) vs. COA*, G.R. No. 114864, December 6, 1996, 265 SCRA 390, declared in categorical manner that the judgment of the government agency concerned regarding the suitability of the product, given the nature of its services, should be accorded respect even if there could have been substitute items.

Equally decisive and of similar tenor is the implication of the Court's declaration in *Baylon vs. Ombudsman and Sandiganbayan*, G.R. No. 142738, December 14, 2001, wherein the reference to brand names, while supposedly prohibited under the above cited Section 18 of RA No. 9184, was allowed.<sup>14</sup>

In its August 17, 2011 Decision, the Commission on Audit, upon automatic review, disapproved the Regional Office March 19, 2010 Decision.

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<sup>10</sup> Id. at 24-25.

<sup>11</sup> Id. at 24.

<sup>12</sup> Id. at 25-26.

<sup>13</sup> Id. at 60-76.

<sup>14</sup> Id. at 80-81.

In affirming the Notice of Disallowance, it held that the disallowance was proper, and that petitioners should be held liable for ₱118,039,493.46.<sup>15</sup>

On July 28, 2014, petitioners Governor Lazaro, Dennis Lazaro, Jara, Relova, Mondez, Del Mundo, and Lagos (petitioners Governor Lazaro, et al.) filed a Petition for Certiorari<sup>16</sup> before this Court, docketed as G.R. No. 213323. Petitioner Villanueva filed another Petition for Certiorari, which was docketed as G.R. No. 213324.<sup>17</sup>

In its August 5, 2014 Resolution, this Court consolidated the two (2) Petitions.<sup>18</sup>

On November 19, 2014, respondents Commission on Audit, the Regional Director of the Regional Office No. IV-A, and the Audit Team Leader of the Commission on Audit, Province of Laguna filed their Consolidated Comment.<sup>19</sup> Petitioners filed their Reply on February 9, 2015.<sup>20</sup> Petitioners Villanueva and Governor Lazaro, et al. filed their Memoranda on June 11, 2015<sup>21</sup> and June 26, 2015,<sup>22</sup> respectively. The Office of the Solicitor General adopted its Consolidated Comment as its Memorandum.<sup>23</sup>

In its July 12, 2016 Resolution, this Court denied petitioners' Application for Temporary Restraining Order and Writ of Preliminary Injunction dated April 8, 2016.<sup>24</sup>

Petitioner Villanueva points out that she did not participate in the transactions prior to July 5, 2005, and should not be held liable for them.<sup>25</sup>

Petitioners Governor Lazaro, et al. argue that they had factual basis for resorting to direct contracting on the basis of brand names because: (1) there are exceptions to the prohibition against referring to brand names under Republic Act No. 9184;<sup>26</sup> (2) the Therapeutics Committees of the Province of Laguna's district hospitals issued Certifications/Justifications recommending the brand names selected;<sup>27</sup> and (3) the Certificates of Exclusive Distributorship and Certificates of Product Registration proved that the

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<sup>15</sup> Id. at 31.

<sup>16</sup> *Rollo* (G.R. No. 213323), pp. 3–27.

<sup>17</sup> *Rollo* (G.R. No. 213324), pp. 3–22.

<sup>18</sup> Id. at 109.

<sup>19</sup> Id. at 114–137.

<sup>20</sup> Id. at 140.

<sup>21</sup> Id. at 169.

<sup>22</sup> Id. at 198.

<sup>23</sup> Id. at 194.

<sup>24</sup> Id. at 353.

<sup>25</sup> Id. at 176–179.

<sup>26</sup> *Rollo* (G.R. No. 213323), p. 13.

<sup>27</sup> Id. at 10–11.

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suppliers selected “were the exclusive distributors”<sup>28</sup> of the procured medical items.<sup>29</sup>

Petitioners Governor Lazaro, et al. further insist that even if the contract was defective, a claim under the defective contract can still be satisfied under the principle of *quantum meruit*. They point out that in *Royal Trust Construction v. Commission on Audit*<sup>30</sup> and *EPG Construction Co. v. Hon. Vigilar*,<sup>31</sup> this Court allowed the payment to the contractor despite perceived infirmities in the contract. The infirmities did not render the contract illegal.<sup>32</sup>

Respondents state that Section 18 of Republic Act No. 9184 expressly prohibits reference to brand names, without any exception or condition.<sup>33</sup> The Certifications/Justifications issued by the Therapeutics Committees were merely recommendatory, whereas the language of Republic Act No. 9184 is mandatory.<sup>34</sup> Further, the Therapeutics Committees did not refer to any clinical study to support their claims in the Certifications/Justifications.<sup>35</sup> They did not prove that there were no substitutes for the procured items that could have been obtained at terms more advantageous to the government.<sup>36</sup>

Respondents argue that the principle of *quantum meruit* does not apply here because petitioners patently violated the legal provisions on competitive public bidding. They insist that petitioner Villanueva is liable, for it is her duty, as Provincial Accountant, to confirm the completeness and propriety of the procurement documents. They further claim that she certified the documents supporting the disbursement vouchers even when they were not proper.<sup>37</sup>

The issues for this Court’s resolution are:

First, whether or not the necessary conditions for direct contracting were met in the disallowed transactions;

Second, whether or not the principle of *quantum meruit* applies here; and

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<sup>28</sup> Id. at 10.

<sup>29</sup> Id.

<sup>30</sup> G.R. No. 84202, November 22, 1988. Unsigned Resolution.

<sup>31</sup> 407 Phil. 53 (2001) [Per J. Buena, Second Division].

<sup>32</sup> *Rollo* (G.R. No. 213323), pp. 14–15.

<sup>33</sup> *Rollo* (G.R. No. 213324), pp. 126–127. Respondents cite the Government Procurement Policy Board’s Non-Policy Opinion No. NPM 020-2004.

<sup>34</sup> Id. at 128–129.

<sup>35</sup> Id. at 129.

<sup>36</sup> Id.

<sup>37</sup> Id. at 132–133.

Finally, whether or not petitioner Villanueva can be held liable for disallowed transactions in which she has not been shown to have participated.

This Court denies the Petition in G.R. No. 213323 and partially grants the Petition in G.R. No. 213324.

## I

Petitioners failed to show that the Commission on Audit committed grave abuse of discretion in disallowing the expenditures covered by the Notice of Disallowance.

The Commission on Audit based its disallowance on: (1) the purchases being accomplished without public bidding, in violation of Section 10 of Republic Act No. 9184; and (2) reference to brand names being made to invoke an exception to the competitive bidding requirement, in violation of Section 18 of Republic Act No. 9184.<sup>38</sup>

Petitioners Governor Lazaro, *et al.* cite *National Center for Mental Health Management v. Commission on Audit*<sup>39</sup> to support their claims. They point out that this Court accorded respect to administrative agencies' exercise of discretion whenever reference to brand names and the consequential resort to negotiated purchases were made.<sup>40</sup> In that case, this Court laid exceptions to the prohibition against references to brand names under Republic Act No. 9184. Further, the Certifications/Justifications of the Therapeutics Committees, which are responsible for determining the drugs to be procured by government hospitals, explained the choice of the brand names.<sup>41</sup>

Petitioners Governor Lazaro, *et al.* point out that in *National Center for Mental Health Management*, this Court found that while there could have been substitute items, the procuring entity's judgment on the suitability of the brand of the items procured should be accorded respect.<sup>42</sup>

What petitioners Governor Lazaro, *et al.* fail to mention is that *National Center for Mental Health Management* was decided in 1996, before Republic Act No. 9184 was enacted in 2003. Exceptions to the prohibition against reference to brand names in Republic Act No. 9184 could not have been laid out years before the statute's enactment.

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<sup>38</sup> Id. at 35–42.

<sup>39</sup> 333 Phil. 222 (1996) [Per J. Vitug, En Banc].

<sup>40</sup> *Rollo* (G.R. No. 213324), p. 207.

<sup>41</sup> Id.

<sup>42</sup> Id. at 207–208.

The law is patently clear, with no exceptions: “[r]eference to brand names shall not be allowed.”<sup>43</sup> Without basis to claim that it was proper to refer to brand names in their procurement, the claim that this case is an exception to the requirement of competitive bidding has no leg to stand on. Consequently, the transactions were properly disallowed.

## II

When asserting their limited or absence of liability based on the principles of *quantum meruit* and good faith, petitioners, in good diligence, must clearly allege and support the factual basis for their claims. It is not this Court’s burden to construe petitioners’ incomplete submissions and vague narrations to determine if their assertions have merit.

On the basis of *quantum meruit*, petitioners claim that even if the transactions were properly disallowed, they should not be required to reimburse the disallowed amounts. This is because all the medical items procured were delivered in good condition and distributed to the provincial and health centers. They were used by the intended beneficiaries of the health program. Petitioners cite *Royal Trust Construction*,<sup>44</sup> *EPG Construction Co.*,<sup>45</sup> *Dr. Eslao v. The Commission on Audit*,<sup>46</sup> and *Melchor v. Commission on Audit*<sup>47</sup> to support their position.

*Royal Trust Construction*, *EPG Construction Co.*, and *Eslao* are not squarely applicable here. All three (3) cases involved the question of whether payment should be made to the contractor who had already provided the services covered by a disallowed transaction. They did not tackle the liability of public officials responsible for irregular transactions.

Indeed, the principle of *quantum meruit*—that a party is allowed to recover as much as he or she reasonably deserves<sup>48</sup>—is usually invoked with regard to paying a contractor for works rendered. Here, however, the contractors have already been paid, and the question to be resolved is whether the public officers responsible for the irregularity must reimburse the government for it.

*Melchor* is more relevant than the rest here, as it pertained to the liability of a public officer for disallowed transactions. Nonetheless, it is still not entirely on all fours with this case. *Melchor* involved two (2) amounts

<sup>43</sup> Rep. Act No. 9184 (2003), sec. 18.

<sup>44</sup> G.R. No. 84202, November 22, 1988. Unsigned Resolution.

<sup>45</sup> 407 Phil. 53 (2001) [Per J. Buena, Second Division].

<sup>46</sup> 273 Phil. 97 (1991) [Per J. Gancayco, En Banc].

<sup>47</sup> 277 Phil. 801 (1991) [Per J. Gutierrez, Jr., En Banc].

<sup>48</sup> *Daraga Press, Inc. v. Commission on Audit*, 760 Phil. 391, 407 (2015) [Per J. Del Castillo, En Banc].

that were disallowed: (1) ₱344,340.88, when the Commission on Audit found that the legal requirements for the contract had not been met; and (2) an additional ₱172,003.26, supposedly for extra work on the same project, when the Commission on Audit found that there had been no supplemental agreement executed for this additional amount.


In *Melchor*, this Court reversed the disallowance for the amount of ₱344,340.88, because the requirements for the contract on the project had substantially been complied with as far as that amount was concerned. However, this Court determined it proper to declare the contract for extra works as void since there was no approval by the proper authority on the additional amount. Thus, disallowing the amount of ₱172,003.26 had basis. Despite the disallowance, this Court held that the petitioner's liability for the entire amount of ₱172,003.26 should not be considered automatic. This Court recognized that while the principle of *quantum meruit* is generally contemplated for unpaid contractors, it also applied to the public officer in that case. It directed the Commission on Audit to compute the value of the extra works under *quantum meruit*, and hold the public officer liable for the excess or improper payment for the extra works, if any.

Although this Court in *Melchor* recognized the possibility of applying the principle of *quantum meruit* when considering a public officer's liability, it must be stressed that it was not used to completely absolve this liability. Rather, the principle was used to determine whether the contractor had been paid beyond the amount deserved based on *quantum meruit*, such that the public officer there was liable only for the amount that was paid beyond the reasonable amount deserved by the contractor. Even more significant, before it applied the principle of *quantum meruit*, this Court had determined that the requirements for the validity of the main contract of ₱344,340.88 had already been met. This is not the case here.

Here, no part of the disallowed transaction could be deemed valid. Petitioners plainly violated the law requiring procurement to undergo competitive bidding. In doing so, they also violated the law prohibiting reference to brand names.

Moreover, even if the principle of *quantum meruit* could be applied here, petitioners fail to establish the factual basis for its application. In *Melchor*, to determine a public officer's liability based on *quantum meruit*, the amount of reasonable value of the procured items or services must first be established, so that the public officer is liable for only the excess paid beyond the reasonable value.

Here, petitioners were held liable for the disallowed purchase of medical items amounting to ₱118,039,493.46. They do not, however, provide





any basis to determine what were purchased. Thus, there is no basis to determine the reasonable value for the items purchased.

This Court cannot accept the position that the entire ₱118,039,493.46 was the reasonable value for the items purchased.

Petitioners enumerated neither the items purchased without public bidding nor the suppliers for these items. Just to form an idea of what were purchased and their values, this Court had to rely on the available documents submitted.

Petitioners attached some Purchase Requests to the Petition.<sup>49</sup> The items and costs covered by these are summarized as follows:

Quantity	Unit of Issue	Item Description	Estimated Unit Cost	Estimated Cost
7	bxs	CEA OGA X-Ray film green sensitive 11x14 (100's)	₱18,500.00	₱185,000.00
10	bxs	CEA OGA X-Ray film green sensitive 14x17 (100's)	24,000.00	240,000.00
10	bxs	Fixer (manual)	3,500.00	35,000.00
10	bxs	Developer (manual)	3,500.00	35,000.00
5	bxs	Basic Trash Bag XL (green, black, yellow)	13,000.00	65,000.00
5	bxs	Basic Trash Bag XXL (green, black, yellow)	21,000.00	105,000.00 <sup>50</sup>
10	bxs.	Isosorbide 5mg. oral/sub tab. x 100's (NITROSORBON)	1,350.00	13,500.00
20	bxs.	Cinnarizine tab. 25mg. x 100's	958.00	19,160.00
144	btls.	Pheylpropanolamine syrup 60ml.	98.00	14,112.00
10	bxs.	Omeprazole 20mg. cap. x 100's	7,000.00	70,000.00
300	bxs.	ATS 1,500 iu	128.00	38,400.00
300	bxs.	ATS 3,000 iu	268.00	80,400.00
300	bxs.	ATS 5,000 iu	398.00	119,400.00 <sup>51</sup>
8	bxs	Euomed Dextran 70[%] in D5W 500ml x 15's (glass)	14,500.00	116,000.00
3	bxs	Euomed Aminosyn 3.5% 500ml x 15's (glass)	11,500.00	34,500.00
5	bxs	Euomed D5W 250ml x 20's (glass)	3,100.00	15,500.00
30	bxs	Euomed D5NMK 11 x 8's	2,000.00	60,000.00
150	bxs	Euomed Plain NSS for Irrigation 11 x 12's	850.00	127,500.00
100	bxs	Euomed Euro-ion 500ml x 24's	1,600.00	160,000.00

<sup>49</sup> *Rollo* (G.R. No. 213323), p. 7. The Purchase Requests were attached as Annexes G, G-1 to G-15 of the Petition.

<sup>50</sup> *Id.* at 136, Annex G.

<sup>51</sup> *Id.* at 137, Annex G-1.

10	bxs	Euomed 20% Mannitol Injection 24's	6,000.00	60,000.00 <sup>52</sup>
100	bxs.	Euro-ION 500ml x24's Euro-Med	1,600.00	160,000.00
250	bxs.	D5LR 1L x12's Euro-Med	830.00	207,500.00
150	bxs.	PNSS 1L x12's Euro-Med	830.00	124,500.00
100	bxs.	PLR 1Lx12's Euro-Med	830.00	83,000.00
5	bxs.	PLR 500ml x24's Euro-Med (DrW) 500cc	1,600.00	8,000.00
5	bxs.	CMI Infusion set, adult, 300's	25,000.00	125,000.00
5	bxs.	Soluset, adult, pedia, 50's	30,000.00	150,000.00 <sup>53</sup>
15	bxs	Glibenclamide 5mg tab x 100's	675.00	10,125.00
12	bxs	Erythromycin tab 500mg x 100's	2,160.00	25,920.00
10	bxs	Piracetam tab 400mg x 100's	1,290.00	12,900.00 <sup>54</sup>
20	bxs	Erythromycin tab 500mg x 100's (ETRIOGAPE)	2,800.00	56,000.00
144	btls.	Erythromycin susp. 200mg/5ml (Etriogape)	198.00	28,512.00
144	btls.	Vit B Complex, Iron, Lysine syrup (APPETASON) 120ml	250.00	36,000.00
144	btls.	Multivitamins syrup 120ml (MULTI-GROW)	156.00	22,464.00
144	btls.	Ascorbic Acid syrup 100mg/5ml (VITACOR-C) 120ml	103.00	14,832.00
20	bxs	Diclofenac tab 50mg x 100's (VOREN)	900.00	18,000.00
144	btls.	Aluminum MgOH susp 200mg/100ml (MELMAG)	78.00	11,232.00
144	btls.	Carbocisteine 50mg/ml drops (CEASCOL)	59.75	8,604.00
20	bxs.	Salbutamol tab 2mg x 100's (ASMAR)	480.00	9,600.00
20	bxs.	Salbutamol neb 30's (HIVENT)	1,080.00	21,600.00
20	bxs.	Dicycloverine tab 10mg x 100's (SPASMO-DORCASAL)	258.00	5,160.00
20	bxs.	Furosemide tab 40mg x 100's (MARSEMIDE)	485.00	9,700.00
20	bxs.	Captopril tab 5mg (TENSORIL)	2,228.00	44,560.00
200	vls.	Cefuroxime 250mg vl (CEPHIN)	268.00	53,600.00
30	bxs.	Glibenclamide 5mg tab 100's (DEBTAN)	758.00	22,740.00 <sup>55</sup>
120	vls.	Citiceline 500 mg.vls.	520.00	62,400.00
120	vls.	Citiceline 1 gm vls.	816.00	97,920.00 <sup>56</sup>
10	bxs.	Nitroglycerin patch x 30's	1,908.00	19,080.00
50	bxs.	Clenidine amps.x5's	630.00	31,500.00
50	bxs.	Ipratropium + Salbutamol UDV x 20's	936.00	46,800.00

<sup>52</sup> Id. at 138, Annex G-2.

<sup>53</sup> Id. at 139, Annex G-3.

<sup>54</sup> Id. at 140, Annex G-4.

<sup>55</sup> Id. at 141, Annex G-5.

<sup>56</sup> Id. at 142, Annex G-6.

5	bxs.	Insulin penfill x 5's	2,250.00	11,250.00
5	bxs.	Insulin penfill x 5's	2,250.00	11,250.00 <sup>57</sup>
50	bxs.	Piracetam 1 gm/amps. X 12's	767.00	38,360.00
50	bxs.	Piracetam 3 gm/amps.	754.00	37,700.00
10	bxs.	Mesna amps. x 5's	641.00	6,410.00 <sup>58</sup>
(illegible)	vls.	Cefuroxime 750 mg vls.	360.00	180,000.00
(illegible)	vls.	Amikacin Sulfate 50 mg/ml	204.00	40,800.00
(illegible)	vls.	Gentamicyn 80 mg/ml	33.00	16,500.00
(illegible)	vls.	Ampicillin 250mg vials	50.00	25,000.00
(illegible)	vls.	Tranexamic Acid 500 mg. vls.	180.00	36,000.00 <sup>59</sup>
200	bxs.	Paracetamol 150mg./ml., 10's, vials	600.00	120,000.00 <sup>60</sup>
500	amps.	Hyoscine amp. 20mg/ml	63.00	31,500.00
1,500	amps.	Tranexamic acid 500mg.	180.00	270,000.00 <sup>61</sup>
2	doz.	Polyglactin 1-0, round ndle	7,800.00	15,600.00
2	doz.	Polyglactin 0, round ndle	7,800.00	15,600.00
2	doz.	Polyglactin 3-0, round ndle	7,800.00	15,600.00
1	doz.	Polyglactin 2-0, round ndle	7,800.00	7,800.00
2	doz.	Polyglactin 4-0, round ndle	7,800.00	15,600.00
2	doz.	Polyglactin 4-0, cutting ndle	9,950.00	19,900.00
2	doz.	Polyglactin 5-0, round ndle	16,000.00	32,000.00
1	doz.	Polyglactin 5-0, cutting ndle	9,950.00	9,950.00 <sup>62</sup>
20	gals.	Povidone 10% antiseptic sol.	1,650.00	33,000.00
8	gals.	Stersol disinfecting sol w/ anti rust	7,800.00	62,400.00
5	gals.	Benzol surface disinfecting sol & deodorizer	3,420.00	17,100.00 <sup>63</sup>
1000	amps	Ars 3,000	132.00	132,000.00 <sup>64</sup>
1000	amps	Ars 1,500	66.00	66,000.00 <sup>65</sup>
Total estimated costs (of the attached Purchase Requests)				<b>₱4,388,041.00</b>

The relationship between the attached Purchase Requests and the disallowances is unclear. The sum of total estimated costs in the attached Purchase Requests is about ₱4,388,041.00, which constitutes only a small fraction of the total disallowed transactions, ₱118,039,493.46. The Purchase Requests also refer to generic items such as basic trash bags.<sup>66</sup> Notably, some of them do not seem to refer to branded items. This Court notes that the July 18, 2006 Audit Observation Memorandum of the Commission on Audit Legal

<sup>57</sup> Id. at 143, Annex G-7.

<sup>58</sup> Id. at 144, Annex G-8.

<sup>59</sup> Id. at 145, Annex G-9.

<sup>60</sup> Id. at 146, Annex G-10.

<sup>61</sup> Id. at 147, Annex G-11.

<sup>62</sup> Id. at 148, Annex G-12.

<sup>63</sup> Id. at 149, Annex G-13.

<sup>64</sup> Id. at 150, Annex G-14.

<sup>65</sup> Id. at 151, Annex G-15.

<sup>66</sup> Id. at 136, Annex G.

and Adjudication Cluster Region IV observed that “no public bidding in the procurement of medicines, medical supplies[,] and equipment was ever conducted for the year 2005.”<sup>67</sup> It would appear that even the trash bags may have been purchased without public bidding.

This Court also notes the observation in the Regional Cluster Director’s Decision on the types of drugs purchased and their suitable, less expensive substitutes:

There remain suitable substitutes in the market which can be obtained at more advantageous prices to the government, a condition which must also be considered before resorting to direct contracting with companies claiming to be exclusive distributors/dealers. A case in point is the purchase of “Biogesic” brand of Paracetamol 500 mg. acquired by the agency at the price of ₱2.34 per piece. The market is flooded with many brands of paracetamol. Based on the Philhealth’s Drug Price Reference Index (DPRI), a listing of prices of selected number of essential drugs developed to promote drug price transparency, rational and fair drug pricing, and rational use according to the DOH and Philhealth, such could be available at prices from ₱1 to ₱4. Another case is the purchase of Amoxicillin, 500 mg brand “Himox” which the agency purchased at ₱13.305 per capsule. Amoxicillin 500 mg can be purchased at the cost of range of ₱5 to ₱10 per capsule. Another case, is the purchase of Mefenamic acid, 500 mg. purchased by the Provincial Government of Laguna from an exclusive distributor at ₱14.29 per tablet which again according to DPRI could be acquired at the range of ₱5 to ₱7 per tablet. The claim therefore that the use of branded products is advantageous to the government or did not result to any pecuniary loss to the government is of doubtful validity.<sup>68</sup>

This Court further notes the Commission on Audit’s observation that some of the goods purchased were not sold by an exclusive dealer or manufacturer:

Items	Supplier
Medicines and Vitamins	
Vitamin A Cap. 200,000 IU cap./100’s	Inah Medica Enterprises
Vitamin B complex + C amp Benutrex	South East Star Enterprises
Multivitamin syrup 60ml Jalvin	Jaltam Trade
Amoxicillin 500mg cap Himox 100’s	United Laboratories Inc.
Amoxicillin 250mg susp Himox 60 ml	United Laboratories Inc.
Ampicillin 500mg vls Ampicin	United Laboratories Inc.
Ampicillin 250 mg vls Ampicin	United Laboratories Inc.
Ampicillin 500 mg vls Amplivacil	Elin Pharmaceuticals Inc.
Paracetamol 500mg. tab. 500’s	United Laboratories Inc.
Biogesic	
Paracetamol 250mg. syrup Biogesic	United Laboratories Inc.
Paracetamol 120mg. syrup Biogesic	United Laboratories Inc.
Carbocisteine 500mg cap. 100’s	Medlines Enterprises
Ceascol	

<sup>67</sup> Id. at 158.

<sup>68</sup> Id. at 178.

Carbocisteine 100mg/60ml Fluralex  
 Cefalexin 500mg cap 50's Lexum  
 Cefalexin 250mg susp. Lexum  
 Cotrimoxazole 400mg tabs Jaltrax  
 Cotrimoxazole 200mg sus Jaltrax

Medlines Enterprises  
 United Laboratories Inc.  
 United Laboratories Inc.  
 Jaltam Trade  
 Jaltam Trade

#### Medical Supplies

X-ray film 14x17x100's Kodak  
 X-ray film 11x14x100's Kodak  
 X-ray film 14x17, 100's Agfa  
 X-ray film 11x14, 100's Agfa  
 Dextrose 5% 0.9 Sodium Chloride  
 1000m  
 Dextrose 5% in water 1000ml 12's  
 Silkam 3/0 w/cutting needle DS24  
 Silkam 2/0 w/cutting needle DS24  
 Surgical Gloves size 6.5 Unimax  
 Surgical Gloves size 7 Unimax  
 Pop bandage Hospikast

Marben Commercial  
 Marben Commercial  
 Careline Enterprises  
 Careline Enterprises  
 Vitacare Philippines Co.  
 Vitacare Philippines Co.  
 Careline Enterprise  
 Careline Enterprise  
 Innovators Trading  
 Innovators Trading  
 South East Star Enterprises

#### Medical Equipment

Dialyzer CA-130 Baxter  
 Oxygen regulator

Careline Enterprises  
 MegaWealth Dist. Corp.<sup>69</sup>

These circumstances and observations show that many of the items purchased without bidding could have been purchased at a lower cost. Petitioners fail to address these. This Court finds no basis to conclude that the amount of ₱118,039,493.46 constitutes the reasonable value for the purchased goods.

Petitioners have not clearly alleged or substantiated any basis for any amount to constitute reasonable value for the purchased goods.

Likewise, petitioners, in good diligence, should have alleged and supported their claims of good faith, which were based on their supposed reliance on expert advice.

Petitioners fail to allege and support with good diligence their claims of good faith. Petitioners claim that they relied on the expertise of the Therapeutics Committees, which they allege to have recommended the chosen brand names. They claim that they were right to rely on the Therapeutics Committees, which are responsible for "determining the drugs to be procured by government hospitals."<sup>70</sup> Under the Department of Health's Hospital Pharmacy Management Manual, the Pharmacy and Therapeutics Committee has the authority to recommend or assist in the formulation of policies on evaluation, selection, and therapeutic use of drugs in hospitals.<sup>71</sup> Executive Order No. 49 issued by then President Fidel V. Ramos provides that the Therapeutics Committee shall be responsible for determining which products

<sup>69</sup> Id. at 34-35.

<sup>70</sup> Id. at 11-12.

<sup>71</sup> Id. at 11.

are to be procured by the respective government entities.<sup>72</sup>

To convince this Court of their good faith, petitioners should have sufficiently alleged facts that would show that there was no collusion between petitioners and the Therapeutics Committees to use the committee's role as a tool to circumvent the rules on procurement.

Petitioners Governor Lazaro, et al. claim:

Before the TC made its recommendation, it made exhaustive researches and always consulted with the provincial doctors and health practitioners in the nine (9) provincial hospitals and health centers. Further, before petitioners made the final decision as to which medicines to purchase, they required the TC to justify its recommendations in writing. . . .

. . . .

With this process, the PGL was assured that its annual health program, its Annual Procurement Plan (APP) for drugs and medicines, including its dental and medical supplies and equipment, and their acquisitions, squarely addressed the real needs of its constituents.<sup>73</sup>

In their Memorandum, petitioners Governor Lazaro, et al. reformulated their narration of events:

The TC, following the foregoing criteria, issued Justifications which guided petitioners. Further, Certificates of Exclusive Distributorship and Certificates of Product Registration were submitted.

*Supported by the foregoing, Purchase Requests were prepared.*<sup>74</sup>  
(Emphasis supplied, citations omitted)

To support their claims, petitioners Governor Lazaro, et al. supposedly attached copies of the Certifications/Justifications of the Therapeutics Committees of different district hospitals of the Provincial Government of Laguna.<sup>75</sup> A scrutiny of these documents reveals that half of the Annexes were merely Certifications signed by various companies, pertaining to Innovators Trading as their exclusive dealers. Annex E is a Letter signed by the Promotions Manager of Coloplast:

Strengthening our presence in the Laguna, Batangas area, we are please[d] to inform you that as of 01 Aug. 2004, we have appointed Innovators Trading as our exclusive dealer for the ff. products:

<sup>72</sup> Id. at 12.

<sup>73</sup> Id. at 6.

<sup>74</sup> *Rollo* (G.R. No. 213324), p. 201.

<sup>75</sup> *Rollo* (G.R. No. 213323) pp. 112–121, Annexes E to E-9 of the Petition.

Comfeel Plus Ulcer Dressing 10 x 10 cm  
Comfeel Plus Ulcer Dressing 20 x 20 cm  
Comfeel Paste  
Comfeel Powder  
Purilon Gel  
Mc2002 Ostomy bags, all sizes  
Alterna Ostomy bags, all sizes

Validity of this appointment will be effective 01 August 2004 to 31 December 2004.<sup>76</sup>

Annex E-1 is an August 15, 2005 Certification signed by a sales consultant of Berovan Marketing, Inc. on exclusive distributorship:

This is to certify that INNOVATORS TRADING with business address at #23P. Gomez Street, San Pablo City has been appointed as the Exclusive Distributor of Berovan Marketing, Inc[.] for the Government Hospitals in Laguna.

No other distributor could give a lower price other than our exclusive distributor.<sup>77</sup>

It should be noted that under this Certification, Innovators Trading was not described as Berovan Marketing, Inc.'s exclusive distributor in general, but rather, "appointed as the Exclusive Distributor"<sup>78</sup> for Laguna's government hospitals.

Annex E-2 is a January 30, 2004 Certification whose contents are practically identical to Annex E-1.<sup>79</sup>

Annex E-3 is a March 4, 2004 Certification that reads:

This is to certify that INNOVATORS TRADING, located at San Pablo, Laguna is an exclusive distributor of MICROBIO SPECIALISTS, INC., for the province of Batangas, Laguna[,] and Quezon. And that there is no dealer/sub-dealer that can offer [a] lower price than them.<sup>80</sup>

Annex E-4 is a February 16, 2005 Certification signed by the vice president of administration of Quest Diagnostic Systems, which reads:

This is to certify that INNOVATORS TRADING of San Pablo City[,] Laguna is an EXCLUSIVE DISTRIBUTOR for Quest Diagnostics

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<sup>76</sup> Id. at 112.

<sup>77</sup> Id. at 113.

<sup>78</sup> Id.

<sup>79</sup> Id. at 114.

<sup>80</sup> Id. at 115.

Systems' complete range of products in the Provincial Government Hospitals in the area of Batangas, Mindoro[,] and Laguna[.]<sup>81</sup>

These Certifications were not issued by the Therapeutics Committees. Moreover, they do not give reasons for referring to brand names, and could not have formed the basis of petitioners' good faith or reliance on the Therapeutics Committees.

The rest of the Annexes alleged to have been issued by the Therapeutics Committees of various district hospitals, denominated as Justifications, are hardly more persuasive. Annexes E-5 to E-8 substantially and identically read:

Based on our clinical experience, the drugs requested are effective and have less adverse reaction and these drugs are listed in our National Drug Formulary.

We refrain from using other drugs not included in these requisition because we found out that these adverse effects prolong the length of stay of patient.

Our rationale for selecting these drugs are based on the following:

- a. Where several comparable drugs are available for the same therapeutic indication[,] it is necessary to select one which provides the most favorable benefit/risk ratio.
- b. These are drugs which are thoroughly investigated and therefore the best understood with respect to its beneficial properties and limitation.
- c. These drugs with most favorable pharmacokinetic properties, e.g. to improve compliance, minimize risk in various pathophysiological state.<sup>82</sup>

Only Annex-E9 varied in its contents, naming several drugs:

Based on our clinical experience[,] the drugs requested are effective and have less adverse reaction, and these drugs are listed in our National Drug Formulary.

We refrain from using other drugs not included in this requisition because we found out that these have effects and prolonging (*sic*) the length of stay of patients. The drugs listed in our requisition are:

1. 5/7/2004 – 10 bxs. D5% in 8.9 Sodium Chloride, 1000ml., 12's
2. 5/7/2004 – 10 bxs. D5% in Water, 1000ml., 12's

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<sup>81</sup> Id. at 116.

<sup>82</sup> Id. at 117.



3. 9/6/2004 – 12 bxs. Carbocisteine 500mg. cap., 100's, Ceascol
4. 9/6/2004 – 96 btls. Carbocisteine 100mg./60 ml., Fluralex
5. 6/3/2005 – 100 vls. Ampicillin 500 mg., vl., Ampicin
6. 6/7/2005 – 100 vls. Ampicillin 250mg., vl., Ampicin

Our rationale for selecting these drugs are based on the following:

- a) Where several comparable drugs are available for the same therapeutic indication[,] it is necessary to select one which provides the most favorable benefit/risk ratio.
- b) These drugs that are thoroughly investigated and therefore the best understood with [respect] to its beneficial properties and limitations.
- c) These drugs with most favorable pharmacokinetic properties, e.g. to improve compliance, minimize risk in various pathophysiological state.
- d) That no suitable substitutes of substantially the same quality are available at lower prices.<sup>83</sup>

Petitioners Governor Lazaro, et al.'s submissions do not clearly allege and establish the sequence of events, such as when and how the Therapeutics Committees made the recommendations, and when and how petitioners responded to them. These circumstances are vital in establishing petitioners' frame of mind and good faith.

Petitioners Governor Lazaro, et al. suggest that the Purchase Requests were prepared based on the Justifications by the Therapeutics Committees.<sup>84</sup> However, the Justifications are *undated*, and aside from Annex E-9, do not mention any particular supplies or drugs, which suggest that they may have been prepared after the Purchase Requests. The Justifications mention "drugs requested" and "requisition," but aside from Annex E-9, petitioners have not attached anything to show what drugs they were referring to. It is unclear what drugs requested were being justified in the Justifications.

Without any other attachment, this Court is inclined to surmise that the "drugs requested" and "requisition" mentioned in the Justifications pertained to the Purchase Requests. If so, then the Purchase Requests were prepared *before* the Justifications, not *following* the advice of the Therapeutics Committees.

Further, this Court notes the Commission on Audit's observations that: (1) the Therapeutics Committees did not refer to any clinical study to support

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<sup>83</sup> Id. at 121.

<sup>84</sup> Id. at 599.

the claims in the Certifications/Justifications,<sup>85</sup> and (2) these Certifications/Justifications were merely recommendatory, whereas the language of Republic Act No. 9184 is mandatory.<sup>86</sup>

In asserting limited or complete lack of liability based on the principle of *quantum meruit* and good faith, petitioners, in good diligence, bear the burden to clearly allege and support the factual basis for their claims. It is not this Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions.

Petitioners did not fulfill their burden; thus, their claims must be rejected.

#### IV

The Commission on Audit based petitioner Villanueva's liability on her duties as Provincial Accountant:

In response, it must be stressed that it is the duty of petitioner Villanueva, as Provincial Accountant, to certify or confirm not only the completeness but also the propriety of the documents relative to the subject procurement. Here, considering that the subject purchase amounts to millions of provincial funds, petitioner Villanueva should have exercised utmost diligence before she certified the completeness and propriety of the supporting documents of the disbursement vouchers.

In certifying that the documents were complete and in order, when they were in fact not so, petitioner Villanueva failed to act with due care and diligence, knowing fully well that the approval of the disbursement vouchers for the release of public funds largely depends on her certification. Contrary to her claims, petitioner Villanueva failed to meticulously inspect all the documents submitted to her to ensure that the circumstances she was certifying were indeed true and correct.

Indeed, petitioner Villanueva is liable for her failure to exercise due diligence in the performance of her duties as Provincial Accountant.<sup>87</sup>

However, petitioner Villanueva has repeatedly pointed out that she was designated as Officer-in-Charge of the Office of the Provincial Accountant only on July 5, 2005.<sup>88</sup> Prior to this, she was not a signatory to any document related to disbursements and purchases made by the Provincial Government of Laguna. She was an Accountant IV, responsible only for preparing financial reports and bank reconciliations.<sup>89</sup> It was her predecessor as

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<sup>85</sup> *Rollo* (G.R. No. 213324), p. 129.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 132–133.

<sup>88</sup> *Id.* at 176.

<sup>89</sup> *Id.* at 177.



Provincial Accountant, Azucena C. Gacias, who signed and certified the documents pertaining to the purchases in 2004.<sup>90</sup>

Despite petitioner Villanueva's repeated assertions, respondents ignored the material issue.

Public officers should not be held liable for disallowed transactions in which they did not participate. Holding them liable without any proof of their participation in the transaction is grave abuse of discretion.<sup>91</sup> Commission on Audit Circular No. 006-09<sup>92</sup> provides how the Commission on Audit should determine the liability of a public officer in relation to audit disallowances:

SECTION 16. *Determination of Persons Responsible/Liable.* —

16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

16.1.4 Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.

16.1.5 The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 The liability for audit charges shall be measured by the individual participation and involvement of public officers whose duties require

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<sup>90</sup> Id.

<sup>91</sup> *Suarez v. Commission on Audit*, 355 Phil. 527 (1998) [Per J. Panganiban, En Banc].

<sup>92</sup> Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

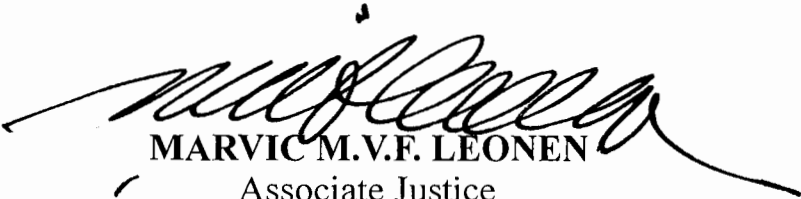
appraisal/assessment/collection of government revenues and receipts in the charged transaction.

- 16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.<sup>93</sup>

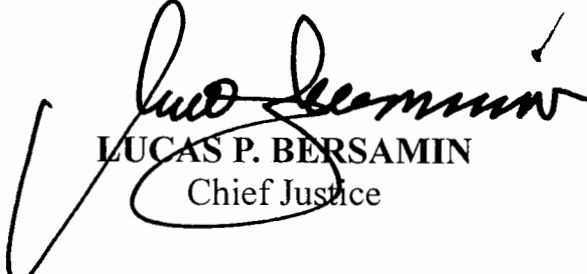
Since petitioner Villanueva's liability for the disallowed transactions is anchored on her position as Provincial Accountant, she should only be liable for the transactions that occurred after she was designated Officer-in-Charge of the Office of the Provincial Accountant. Finding her liable for reimbursements of transactions prior to this constitutes grave abuse of discretion. However, which of the disallowed transactions occurred before her designation is a question of fact that this Court has no evidentiary basis to determine. This Court is constrained to remand the case to the Commission on Audit to properly determine this matter.

**WHEREFORE**, the Petition in G.R. No. 213323 is **DENIED** and the Petition in G.R. No. 213324 is **PARTIALLY GRANTED**. The August 17, 2011 Decision and May 6, 2014 Resolution of the Commission on Audit are **AFFIRMED with MODIFICATION**. Petitioner Evelyn T. Villanueva is **NOT LIABLE** for the disallowed transactions that were completed prior to her designation as Officer-in-Charge of the Office of the Provincial Accountant. The cases are **REMANDED** to the Commission on Audit, which is directed to determine which of the disallowed transactions occurred prior to July 5, 2005, for which petitioner Villanueva is not liable.

**SO ORDERED.**

  
MARVIC M.V.F. LEONEN  
Associate Justice

WE CONCUR:

  
LUCAS P. BERSAMIN  
Chief Justice

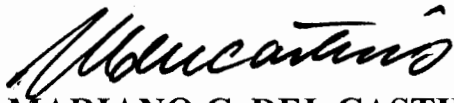
<sup>93</sup> Commission on Audit Circular No. 006-09 (2009), sec. 16.



**ANTONIO T. CARPIO**  
Associate Justice



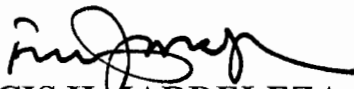
**DIOSDADO M. PERALTA**  
Associate Justice



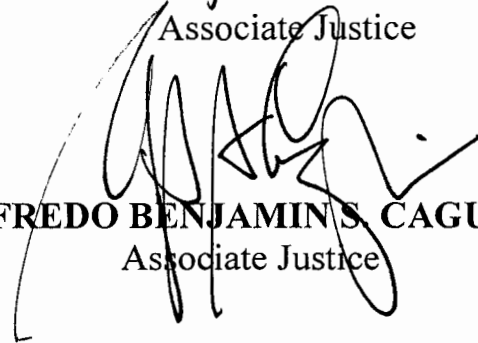
**MARIANO C. DEL CASTILLO**  
Associate Justice



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



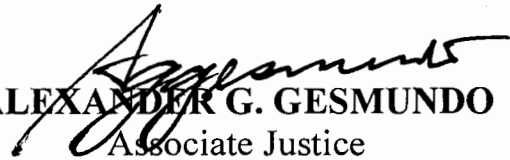
**FRANCIS H. JARDELEZA**  
Associate Justice



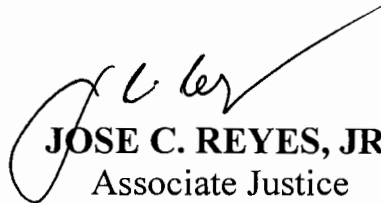
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



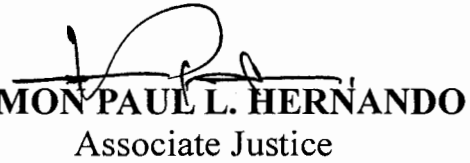
**ANDRES B. REYES, JR.**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice



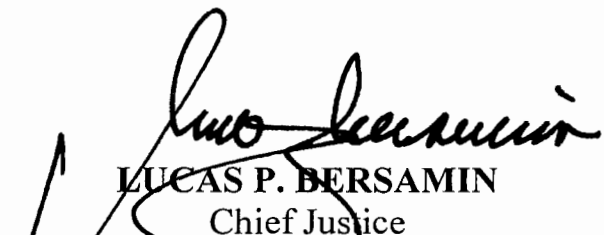
**RAMON PAUL L. HERNANDO**  
Associate Justice



**ROSMARI D. CARANDANG**  
Associate Justice

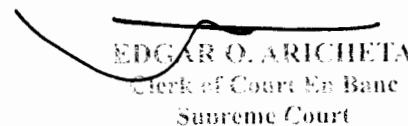
**CERTIFICATION**

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.



**LUCAS P. BERSAMIN**  
Chief Justice

CERTIFIED TRUE COPY



**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court