Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ABOSTA SHIPMANAGEMENT CORP., CIDO SHIPPING COMPANY LTD., and ALEX S. ESTABILLO, Petitioners,	**G.R. No. 214906**
	Present:
- versus -	CARPIO, *J., Chairperson,* PERLAS-BERNABE, CAGUIOA, REYES, J. JR., and HERNANDO,* *JJ.*
DANTE C. SEGUI, Respondent.	**Promulgated:** 16 JAN 2019

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DECISION

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

This labor case is about a seaman's claim for a maximum benefit of permanent and total disability benefits, and attorney's fees.

The Facts of the Case

As narrated by Labor Arbiter (LA) Fatima Jambaro-Franco (LA Franco), the facts are the following:

> [Respondent Dante C. Segui] alleged that he was hired by the [petitioners Abosta Shipmanagement Corporation/Cido Shipping Company Ltd./Alex Estabillo] as an able seaman on board the vessel M/V Grand Quest with a salary of US$564.00 per month; that his employment was covered by an ITF IBF JSU Collective Bargaining Agreement (CBA); that prior to his deployment, he underwent the required pre-employment

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

medical examination (PEME) of which he was declared fit to work and thereafter, boarded the vessel on June 16, 2009; that during his employment, he would be on duty more than 12 hours a day resulting in extreme fatigue and exhaustion; that on October 26, 2010, while on duty, he felt cramps followed by a severe back pain; that he informed the master who advised him to rest; that the next day, he was unable to stand and remained in his cabin for the rest of the voyage; that when the vessel arrived in South Africa, he was admitted to a medical facility and he underwent an x-ray of his back and injection on his left knee; that the same procedure was taken in Colombia and again in Panama where he was diagnosed with a lumbar disc problem and was recommended repatriation; that on December 2, 2010, he arrived in Manila and was referred to the Manila Doctors Hospital where a CT Scan showed he was suffering from "Circumferential Disc Bulge at L4-L5 with Posteromedial Herniation of the Nucleus Pulposus as well as associated Spinal Canal and Neuroforaminal Narrowings as described; Lumbar Spondylosis" x x x; that on December 14, 2010, he underwent Laminotomy and Discectomy at Level L4-L5 and was confined for 3 weeks; that he continued with his therapy but his condition did not improve; that despite the treatment, [Segui's] pain and discomfort persisted, thus, he sought another treatment and opinion from an independent doctor in the person of Dr. Nicanor Escutin; that after a thorough examinations and test, concluded that the nature and extent of [Segui's] injury rendered him permanently and totally unable to work as a seafarer, thus, [Segui] asked [petitioners] to pay his total and permanent disability; that [petitioners], however, refused. Hence, this complaint.

[Petitioners] Abosta Shipmanagement Corporation/Cido Shipping Company Ltd./Alex Estabillo [Abosta, et al.] do not dispute the circumstances of [Segui's] engagement and subsequent deployment to his assigned vessel, as well as his repatriation on medical grounds, but deny liability for the claims and aver: that following [Segui's] repatriation on December 2, 2010 he was immediately referred to the company-designated physician; that [Segui] was diagnosed with Lumbar Disc Herniation and was referred to an orthopedic surgeon and physiatrist x x x; that [Segui] underwent foraminotomy and discectomy of [L4-L5] and tolerated the procedure well; that he was placed on therapy for healing and possible fitness to work x x x; that unknown to the [petitioners], [Segui] stopped attending his medical appointments and instituted his complaint; that during the mandatory conferences, [petitioners] prevailed upon [Segui] to continue his treatment for the final disability assessment; that [Segui] returned to the company[-]designated physician on May 17, 2011 to continue treatment and obtain his final assessment x x x; that finding that [Segui] had reached maximum medical cure, the company-designated-physician assessed [him] with Grade 8 disability-moderate rigidity or 2/3 loss of motion of lifting power of the trunk x x x; that [Segui] is only entitled to the compensation corresponding to the assessment made by the company-designated physician; that there is no basis to claim permanent total disability compensation; that [Segui] failed to prove his entitlement to full disability compensation; and that the findings of the company-designated physician are binding on [Segui].[1]

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[1] CA *rollo*, pp. 162-165.

The LA's Decision

On February 2, 2012, LA Franco rendered a Decision in favor of Segui.[2] The LA held that Segui is entitled to maximum disability benefit after finding that he suffered from a work-related illness/injury while on board the vessel, and applying the terms and conditions of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), which is incorporated in his employment contract. Section 20.B of POEA-SEC provides that the employer shall be liable for disability compensation for work-related illness/injury sustained during the term of the contract.[3]

The LA found that Segui underwent treatment and therapy under the company-designated physician for almost eight months, after which, he was determined to have reached maximum medical cure as of July 8, 2011. However, during his check-up on June 22, 2011, or less than two weeks up to the time he was declared to have reached maximum medical cure, Segui was still assessed to have poor lifting capacity. The medical certificate and assessment dated July 8, 2011, however, made no reference to this medical observation. The LA construed that the July 8, 2011 certification is intended to comply with the 120/240-day period under current jurisprudence.[4]

The LA explained that the entitlement to disability benefits of seamen on overseas work is governed not only by the medical findings but by law (the Labor Code and its Implementing Rules) and contract. A seafarer who is medically repatriated is considered on temporary total disability if he is unable to work for 120 days, during which time he receives sickness wages and is provided medical attention. After the lapse of 120 days and no declaration of fitness or permanent disability is made, the temporary total disability may be extended up to a maximum of 240 days subject to the employer's right to declare that a partial permanent or total permanent disability already exists. After 240 days and without a declaration of fitness/disability, the disability is deemed total and permanent. The LA ruled that between the declaration of the company-designated physician and respondent Segui's own physician, the latter's medical certificate clearly detailing the nature of his disability and extent of incapacity should prevail.[5]

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2 Id. at 170.
3 Id. at 165-166, 169.
4 Id. at 168.
5 Id. at 168-169.

The NLRC Decision

On appeal to the National Labor Relations Commission (NLRC), the commission affirmed the Decision of the LA on January 4, 2013.[6] The NLRC pronounced that since the International Transport Workers' Federation (ITF) Standard Agreement provides for higher disability compensation than the POEA-SEC, the former should prevail over the latter.[7]

The NLRC also ruled that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion, which can then be used by the labor tribunals in awarding disability claims.[8]

The NLRC elucidated on the following findings of fact:

> In the case at bar, records show that on July 8, 2011, the company-designated physician issued a medical report, indicating that [Segui] had "reached maximum medical cure;" and that the "final disability grading under the POEA schedule of disabilities is Grade 8 – moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk" x x x. Inasmuch as [Segui] had already "reached maximum medical cure," it is indubitable that his disability of "moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk" would remain, despite further medical treatment. Clearly, [Segui's] disability is already permanent.
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> Significantly, the company-designated physician never mentioned in his medical report of July 8, 2011 that as of said date, [Segui] was already fit to work as seafarer in any capacity. Therefore, the declaration of the company-designated attending physician in Panama on November 18, 2010, that [Segui] was "Unfit for duty" x x x still stands.
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> Notably, in his disability report dated June 4, 2011, the physician consulted by [Segui] already declared the latter's disability as permanent and that [Segui] is already "UNFIT TO WORK as a seaman in whatever capacity" x x x. Obviously, the findings of the company-designated physicians and [Segui's] appointed physician are the same in that, [Segui] is already permanently unfit for further sea service in any capacity.
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> Indeed, from his repatriation on December 2, 2010, up to this writing, or a period of more than one and a half (1½) years, which is definitely more than 240 days, there is no showing in the records that [Segui] was able to earn wages as seafarer, or in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and

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6 Penned by Presiding Commissioner Gerardo C. Nograles and concurred by Commissioners Perlita B. Velasco and Romeo L. Go; id. at 39-55.

7 Id. at 49.

8 Id. at 50.

> attainment can do. With [Segui's] permanent disability of "moderate rigidity or two thirds (2/3) loss of motion of lifting power of the trunk," it is without doubt that he would no longer be capable of performing the strenuous activities of a seafarer. Truly, no enterprising employer would ever employ, as seafarer, one who has lost two thirds (2/3) of the motion or lifting power of his trunk. Patently, [Segui] is already permanently and totally disabled from further working as a seafarer in any capacity.
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> In fact, even if the company-designated physician assessed [Segui's] disability at Grade 8 only, still, the latter is entitled to 100% compensation. This is in consonance with the provision of the ITF Standard Collective Agreement/CBA that "any Seafarer assessed at less than 50% disability under the attached Annex 4 but certified as permanently unfit for further sea service in any capacity by the Union's Doctor, shall also be entitled to 100% compensation." Undoubtedly then, [Segui] is entitled to total and permanent disability benefit or 100% compensation granted under the ITF Standard Collective Agreement/CBA.[9]

Abosta, *et al.* moved for reconsideration, which the NLRC denied in a Resolution dated March 26, 2013.[10]

The Court of Appeals Decision

Undaunted, Abosta, *et al.* elevated the case to the Court of Appeals (CA) through a petition for *certiorari* under Rule 65 of the Rules of Court, as amended. On July 31, 2014, the CA rendered a Decision dismissing the petition and affirming the NLRC's Decision.[11]

The CA resolved that the NLRC did not commit grave abuse of discretion in affirming the LA's award of permanent total disability benefits and maximum disability benefits to respondent Segui. The CA expounded that the disability is considered total if there is disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work, which a person of his mentality and attainments could do. It does not mean absolute helplessness. The disability is considered permanent if there is inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines entitlement to permanent disability benefits is the inability to work for more than 120 days.[12]

The CA's findings reveal that from the date of Segui's repatriation on December 2, 2010 up to his consultation with his physician of choice on

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9 Id. at 52-54.

10 *Rollo*, p. 36.

11 Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez, concurring; id. at 36-48a;

12 Id. at 42-43.

June 4, 2011, more than 120 days have passed and the company-designated physician failed to give him a disability grading or declare him fit to work. The company-designated physician only gave him a disability grading when he had already reached a maximum medical cure and even then, Segui's condition had not improved. Although he was given a disability grading, the company-designated physician did not declare him fit for sea duty in any capacity. Thus, the CA determined that the NLRC was correct in affirming the LA's Decision in declaring his disability as total and permanent, and awarding maximum disability benefits to Segui.[13]

Abosta, *et al.* moved for reconsideration, which the CA denied in a Resolution dated October 14, 2014.[14]

The Issues Presented

Unconvinced, petitioners Abosta, et al. filed a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, before the Court, raising the following grounds:

I.

> Whether the [CA] committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement.

II.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that disability compensation is determined not by the number of days of treatment but rather, by the disability grading issued by the company-designated physicians.

III.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that in the absence of evidence of bias, the findings of the company-designated physicians are entitled to great weight and respect.

IV.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that failure of a seafarer to refer the case to a third physician in the event of conflicting findings will result in the dismissal of the complaint.

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13 Id. at 46-47.

14 Id. at 73.

V.

> Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that attorney's fees may not be awarded where there is no evidence of bad faith on the part of the party being held liable for the same.[15]

In his Comment, Segui alleges, among other points, that since his injury is undoubtedly work-related as the same occurred while on board performing his duties and responsibilities, and he has been incapacitated for more than 120 days, he has the right to be compensated total and permanent disability benefits.[16] Segui also avers that in case of conflict between the medical findings of the company-designated physician and his physician, the doubt should be resolved in his favor applying the principle of social justice.[17]

In their Reply, petitioners argue that Segui is not suffering from any permanent total disability, taking into consideration the disability grading given to him by the company-designated physician within the period provided by law. Petitioners also assert that Segui's failure to submit the conflicting medical assessments to an independent third doctor militates against his claim for disability benefits.[18]

The Court's Ruling

The petition is denied.

The Court has consistently held that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. The Court is not a trier of facts and its jurisdiction is limited to errors of law. Here, the first ground, "*whether the CA committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement*," raised by petitioners is factual in nature and is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. Moreover, the issue had been passed upon by the LA, NLRC, and the CA. The CA provided sufficient explanation against petitioners' argument, as follows:

> To be sure, records bear that the vessel M/V Grand Quest which private respondent boarded and from which he was repatriated was "covered by ITF Agreement" from November 10, 2008 to November 9, 2012, encompassing the period when private respondent was employed by

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15 Id. at 8-9.
16 Id. at 98-99.
17 Id. at 108.
18 Id. at 118.

petitioners. Thus, there is no basis for petitioners' claim that the CBA was unproven. As correctly held by public respondent NLRC:

> We find untenable respondents' (petitioners') argument that the CBA under which the Executive Labor Arbiter based her award for disability benefits is unproven. It must be pointed out that the evidence attached by complainant as Annex "B" of his position paper shows that the vessel, Grand Quest, is covered by ITF Agreement from November 10, 2008 to November 9, 2012, x x x or during the period when complainant was employed by respondents as seafarer on board said vessel. Significantly, even as respondents insist that the CBA is unproven and unpresented, they never specifically denied or refuted the said evidence presented by complainant x x x; Hence, respondents are deemed to have admitted that the vessel, Grand Quest, is covered by ITF Agreement from November 10, 2008 to November 9, 2012. x x x[19]

The Court has consistently held that unanimous findings of fact of the lower courts, quasi-judicial agencies and appellate court are binding on the Court and will not be disturbed on appeal.

The rest of the grounds raised can be summarized into one: whether or not the CA committed a reversible error in affirming the NLRC Decision, which upheld the LA's Decision in awarding total and permanent disability benefits to Segui.

It is undisputed that Segui suffered work-related injuries while performing his duties and responsibilities as a seafarer. The only question left to be answered is whether he is entitled to a maximum benefit of permanent and total disability benefits.

In the case of *Elburg Shipmanagement Phils., Inc. v. Quiogue*,[20] the Court expounded and summarized the rule in awarding permanent and total disability benefits, as follows:

> *Harmonizing the decisions*
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> An analysis of the cited jurisprudence reveals that the first set of cases did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required further medical treatment or (2) the seafarer was uncooperative with the treatment. Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the

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19 Id. at 42.

20 765 Phil. 341 (2015).

company-designated physician additional time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

The second set of cases, on the other hand, awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

x x x x

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* [sic] shall govern:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

The Court is not unmindful of the declaration in *INC Shipmanagement* that "[t]he extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages." Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days. The treatment period can be extended to 240 days if the company-designated physician provided some sufficient justification. Equally eminent, however, is the Court's pronouncement in the more recent case of *Carcedo* that *"[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law."*

> Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took in consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.[21] (Emphases ours)

In the present case, the records reveal that from Segui's repatriation and immediate referral to the company-designated physician on December 2, 2010 until the 120-day period on March 31, 2011, the latter did not issue a medical assessment on Segui's disability grading. It was only on the 219th day or on July 8, 2011, when Segui reached the maximum medical cure, that the company-designated physician issued a disability rating of *"Grade 8 disability – moderate rigidity or 2/3 loss of motion or lifting power of the trunk."* Notably, the company-designated physician did not determine Segui's fitness to work. Clearly, there was non-compliance with Items 1 and 2 of the rules on claim for total and permanent disability benefits cited in the *Elburg* case. The company-designated physician failed to issue a medical assessment within the 120-day period from the time Segui reported to him, and there was no justifiable reason for such failure. Likewise, there was no sufficient justification to extend the 120-day period to 240 days. Thus, following the above rules, Segui's disability becomes permanent and total, and entitles him to permanent and total disability benefits under his contract and the collective bargaining agreement.

In contrast, Segui's own physician provided a detailed medical assessment dated June 4, 2011, which justified his disability rating.

> Based on the physical examination and supported by laboratory examination, he developed back problem while working. He had attack of leg cramps while on duty which [unabled him] to stand up. He had also attack of low back pain. He rested on his cabin for the rest of their trip. On two ports of call, he was examined in a medical facility but was only given pain medication. On the 3rd port of call in Panama, he was confine[d] and underwent several examinations. He was diagnosed to have lumbar disc problem and recommended for repatriation. In Manila Doctors [H]ospital, he underwent operation on his lumbar spine since it was found out that he has Slipped Disc. The Intervertebral Disc at level L4/L5 was pressing on his nerve root, so it was remove[d] during the operation. **Even though the disc was removed, he is still having low back pain with numbness. He has still having difficulty in lifting and carrying heavy objects. The prolong[ed] injury to his nerve roots causes non-repairable conditions to them. Nerve cells cannot repair itself, once injured, it becomes permanent. So even he underwent operation, he has still having pain and numbness. He is not expected to perform his previous active status. He is not capable of performing the strenuous activities of a seaman.**

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[21] *Elburg Shipmanagement Phils., Inc. v. Quiogue*, supra note 20, at 361-364.

He is given a PERMANENT DISABILITY. He is UNFIT TO WORK as a seaman in whatever capacity.[22] (Emphasis ours)

The Court observed that the company-designated physician's medical reports for the month of June 2011 are consistent with the medical assessment of Segui's own physician, that is, he is unfit for sea duty in any capacity.

Medical Report dated June 1, 2011

x x x x

At present, there is still note of low back pain accompanied by limited trunk mobility. There is radicular pain on his left lower extremity. He has poor walking tolerance.

Medical Report dated June 8, 2011

x x x x

At present, there is temporary relief of low back pain. The range of motion is likewise getting better. There is numbness and weakness of the lower extremity.

Medical Report dated June 15, 2011

x x x x

At present, he now complains of neck pain. The range of motion is full. There is still note of limited trunk mobility due to pain. There is decreased radicular pain on his lower extremity. He was advised to continue medications.

Medical Report dated June 22, 2011

x x x x

At present, there is low back pain after prolonged sitting. The trunk flexion is functional. However, there is limited trunk extension. He has poor lifting capacity.[23]

Despite the lack of medical assessment from a third independent physician, the Court, on several occasions,[24] can determine which between

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22 CA *rollo*, p. 139.

23 Id. at 114-117.

24 *HFS Philippines, Inc. v. Pilar*, 603 Phil. 309 (2009); *Career Philippines Ship Management, Inc. v. Acub*, G.R. No. 215595, April 26, 2017, 825 SCRA 174; *Gomez v. Crossworld Marine Services, Inc.*, G.R. No. 220002, August 2, 2017, 834 SCRA 279.

the two medical findings has merit. Here, the records of the case are replete with support that Segui's injury is permanent and total, and that he is entitled to permanent and total disability benefits as unanimously declared by the LA, the NLRC and the CA.

On the issue of attorney's fees, the Court affirms the award by the LA, following the ruling in *Gomez v. Crossworld Marine Services, Inc.*,[25] which states that "*under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws.*"

In addition, pursuant to the case of *Nacar v. Gallery Frames*,[26] the Court imposes on the monetary award for permanent and total disability benefits an interest at the legal rate of 6% per annum from the date of finality of this judgment until full satisfaction.

WHEREFORE, premises considered, the Court of Appeals Decision dated July 31, 2014 and the Resolution dated October 14, 2014 in CA-G.R. SP No. 130277 are **AFFIRMED** with **MODIFICATION** in that legal interest at the rate of 6% per annum hereby imposed on the monetary award for permanent and total disability benefits due Dante C. Segui, be reckoned from the finality of this Decision until full satisfaction thereof.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

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25 *Gomez v. Crossworld Marine Services, Inc.*, supra note 24, at 303-304.

26 *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
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
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