Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

QUESTCORE, INC.,
Petitioner,

-- *versus* --

MELODY A. BUMANGLAG,
Respondent.

G.R. No. 253020

Present:

LEONEN, *S.A.J., Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., *and*
KHO, JR., *JJ.*

Promulgated:

DEC 07 2022

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DECISION

M. LOPEZ, *J.:*

The Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, filed by petitioner Questcore, Inc. (Questcore) before this Court assails the Decision[2] dated October 14, 2019 and Resolution[3] dated July 13, 2020 issued by the Court of

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1 *Rollo*, pp. 3-8

2 *Id.* at 13-26. Penned by Associate Justice Evalyn M. Arellano-Morales and concurred in by Associate Justices Florencio M. Mamauag, Jr. and Lily V. Biton of the Special Twenty-first Division, Court of Appeals, Cagayan de Oro City.

3 *Id.* at 35-38. Penned by Associate Justice Evalyn M. Arellano-Morales and concurred in by Associate Justices Lily V. Biton and Richard D. Mordeno of the Former Special Twenty-first Division, Court of Appeals, Cagayan de Oro City.

Appeals (CA) in CA-G.R. SP No. 09062-MIN, which declared respondent Melody Bumanglag (Melody) to be illegally dismissed and adjudged petitioner to be solidarily liable with its foreign principal for respondent's claims.

Petitioner is a corporation engaged in the business of recruitment for overseas employment. On May 10, 2013, it deployed Melody as operations head for its principal, Cosmo Seafoods Ltd. (Cosmo), in Ghana, West Africa. The first contract was for a period of 12 months, from May 10, 2013 to May 10, 2014. Melody was later promoted to vice general manager and her initial one-year contract was renewed for three successive years. The last Employment Agreement covers the period from May 1, 2016 to April 30, 2017.[4] However, on October 25, 2016, before the expiration of her fourth and last contract, Melody was dismissed from employment without just cause and was repatriated to the Philippines.[5] Melody filed a Complaint[6] before the labor arbiter for illegal dismissal, with claims for non-payment of her one month salary, 13th month pay, salary for the unexpired portion of the contract, service incentive leave pay, cash in lieu of prior notice of termination, unused leave, performance bonus, and damages.

Petitioner denied liability for Melody's dismissal on the ground that its solidary liability with the foreign employer only extends up to the first contract. It argued that since it is not privy to the subsequent renewals of Melody's employment contract, it should be released from any liability resulting from the dismissal.[7]

Resolving the dispute, the labor arbiter ruled that Melody was illegally dismissed by her foreign employer.[8] Melody was given a termination letter without informing her of the cause of her dismissal. On the basis of the original Recruitment Agreement between Cosmo and petitioner, the labor arbiter declared petitioner to be solidarily liable with the foreign employer. It held that the successive renewal of Melody's contract is sanctioned under the Recruitment Agreement as there was no showing that the agency relations between Cosmo, as principal and petitioner, as its local agent was severed, thus ruling:

> WHEREFORE, judgment is hereby rendered, ordering Questcore, Inc. and/or Cosmo Seafoods Ltd., to solidarily pay Melody A. Bumanglag the following claims, in the following amounts:
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> | | |
> |---|---|
> | Wages for Unexpired portion of employment contract | - US $20,000 |
> | Unpaid Wages | - 4,000 |
> | Cash payment in lieu of notice of termination | - 8,000 |
> | Performance Bonus | - 21,600 |
> | | **US $53,600** |
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> The rest of the decision in this case dated 29 November 2017 not inconsistent with the foregoing, are hereby adopted and made and integral part hereof.

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4 *Id.* at 41.
5 *Id.* at 14.
6 *Id.* at 39-40.
7 *Id.* at 15.
8 *Id.* at 64-73.

SO ORDERED.[9]

On appeal, the National Labor Relations Commission affirmed with modification the labor arbiter's ruling by deleting the grant of performance bonus and reducing the cash payment award, as follows:

> **WHEREFORE**, in consideration of the foregoing disquisitions, the instant Appeal is **DENIED**. The assailed 08 December 2017 Decision of the Executive Labor Arbiter Rhett Julius J. Plagata is hereby **AFFIRMED** with **MODIFICATION** that respondents-appellants and respondent Cosmo Seafood Ltd. are solidarily liable to pay Melody A. Bumanglag only the following:
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> | | |
> |---|---|
> | Wages for the Unexpired portion of the employment contract | - US $20,000 |
> | Unpaid Wages | - $4,000 |
> | Cash payment in lieu of notice of Termination | - $4,000 |
> | | **US $28,000** |
>
> **SO ORDERED.**[10]

On *certiorari*, the CA affirmed with modification the NLRC's ruling in the assailed Decision dated October 14, 2019 in CA-G.R. SP No. 09062-MIN, thus:

> **WHEREFORE**, the Petition for *Certiorari* is **DENIED**. The July 6, 2018 Decision of the National Labor Relations Commission (NLRC) – Eighth Division, Cagayan de Oro City, in NLRC NO. MAC-01-015276-2018 (RAB-09-OFW (L)-09-20066-17); and its October 9, 2018 Resolution are hereby **AFFIRMED** with **MODIFICATION** that Melody A. Bumanglag is entitled to full reimbursement of her placement fee with twelve percent (12%) interest per annum from October 25, 2016 to the date that this Decision becomes final and executory. All the monetary awards herein to private respondent Bumanglag shall earn legal interest at six percent (6%) per annum from the date that this Decision becomes final and executory until full satisfaction thereof.
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> SO ORDERED.[11]

The CA denied petitioner's motion for reconsideration in the assailed Resolution dated July 13, 2020. Hence, this recourse.

The controversy is centered on whether petitioner Questcore should be held solidarily liable for Melody's illegal dismissal and money claims against her foreign employer Cosmo. The resolution of this issue necessarily involves a determination of a question of fact --- one which may not be appropriately passed upon in a Rule 45 petition since the Court is not a trier of facts. This rule, of course, is subject to certain exceptions, such as when the findings of fact are premised on the supposed absence of evidence, or when the CA manifestly overlooked certain relevant facts, which, if properly considered, would justify a different conclusion.[12] Here, petitioner

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9 *Id.* at 73.

10 *Id.* at 97–98.

11 *Id.* at 25.

12 The recognized exceptions are: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are

insists that there is no substantial evidence to justify the CA's conclusion that it is solidarily liable with the foreign principal Cosmo as the latter's local recruitment agent. Petitioner asserts that unlike the 1st Employment Agreement, it was not a party to and did not sign Melody's 2nd, 3rd, and 4th contracts with Cosmo. Melody dealt directly with the foreign principal such that petitioner has no obligation to Melody due to the lack of privity of contract between them.

Relative to this, petitioner faults the CA for not applying the ruling in *Sunace International Management Services, Inc. v. NLRC*,[13] wherein the Court held that there is an implied revocation of the agency relationship between the local agent and the foreign principal when, after the termination of the original employment contract, the foreign principal directly negotiated a new contract with the employee.

Ruling

The Court **denies** the petition.

Migrant workers or overseas Filipino workers (OFWs) are entitled to security of tenure for the period stipulated in their contracts. If their employments are severed before the end of the contract term without due process, this violates their right to security of tenure and the dismissal is considered illegal.[14] In Melody's case, there is no question that she was illegally dismissed by her foreign employer Cosmo. Melody was simply handed a letter terminating her employment before the end of her 4th employment contract and was given a return ticket to the Philippines.

Under Section 10[15] of Republic Act No. (RA) 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, as amended, an illegally dismissed overseas worker is entitled to the full reimbursement of the placement fee, with interest of 12% per annum, plus salaries for the unexpired portion of the employment contract.[16] Further, the provision states that the foreign employer and the local employment agency are jointly and severally liable for money claims of Filipino workers arising out of an employer-employee relationship, or by virtue of any law or contract, including damages. Section 10 states:

> SEC. 10. *Money Claims.* — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the **claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral,**

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contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. See *Unicol Management Services, Inc. v. Malipot*, 751 Phil. 463, 472-473 (2015) [Per *J.* Peralta, Third Division].

13 515 Phil. 779 (2006) [Per *J.*, Carpio Morales, Third Division].

14 *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per *J.* Leonen, *En Banc*].

15 As amended by Section 7 of Republic Act No. 10022, March 8, 2010.

16 See also *Jerzon Manpower and Trading, Inc. v. Nato*, G.R. No. 230211, October 6, 2021 [Per *C.J.* Gesmundo, First Division].

> **exemplary and other forms of damages**. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.
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> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several.** This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. x x x.
>
> **Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.**
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> x x x x
>
> **In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) *per annum*, plus his salaries for the unexpired portion of his employment contract** or for three (3) months for every year of the unexpired term, whichever is less. (Emphasis supplied)

As a measure of social legislation, RA 8042 recognizes that the constitutional guarantee[17] of giving full protection to overseas workers is an arduous task. Migrant workers are beyond the State's protective mantle due to their geographical location which make them more prone to exploitation. Section 10 of RA 8042 aims to give OFWs greater protection by imposing solidary liability on the local agent and the foreign principal. This is an assurance that the claims of an overseas worker will not be hampered by jurisdictional issues, conflict of laws, or other procedural nuances.[18]

In *Gopio v. Bautista*,[19] the overseas worker was given a notice of termination after 9 months of his deployment to Papua New Guinea. His contract was for a fixed period of 31 months, but was prematurely terminated due to his alleged unsatisfactory performance. Upholding the employee's constitutionally-protected right to security of tenure, the Court ruled that the illegally dismissed worker is entitled to indemnity. The local recruitment agent cannot evade its solidary liability under RA 8042 by claiming that its contract of agency was extinguished as soon as the employee was deployed to work overseas.

In *Sameer Overseas Placement Agency, Inc. v. Cabiles*,[20] the foreign employer Wacoal dismissed Joy Cabiles barely a month after her deployment. She was repatriated on the same day due to her alleged inefficiency, negligence, and failure to comply with the work requirements of Wacoal in Taiwan. Considering the lack of evidence to support such allegations and the abruptness of the termination and repatriation, the Court ruled that Cabiles was illegally dismissed. She was

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17 Article XIII, Section 3 of the 1987 Constitution states:
SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. x x x

18 *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

19 832 Phil. 411 (2018) [Per J. Jardeleza, First Division].

20 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

awarded her salary for the unexpired portion of the employment contract, attorney's fees, and reimbursement of the amounts withheld from her salary. Since petitioner Sameer facilitated Cabiles's deployment, it was adjudged to be solidarily liable with the foreign principal Wacoal.

Aside from illegal dismissal cases, the statutory obligation of a recruitment agency of ensuring faithful compliance by their foreign principals with the employment contract also extends to incidents of unlawful termination due to an OFW's medical condition. In *Jerzon Manpower and Trading, Inc. v. Nato*,[21] Emmanuel Nato was employed as a machine operator in Taiwan when he was diagnosed with chronic kidney disease. After 10 days of dialysis sessions, the broker brought him to the airport for repatriation despite his critical condition. Rejecting Jerzon's claim that it was Nato who insisted on his repatriation, the Court ruled that it was unlikely for the worker to pre-terminate his employment especially when his contract contained provisions for health and labor insurance benefits. Moreover, Jerzon failed to adduce evidence that Nato's illness is of such nature that his continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees.[22] As there was no valid ground for the dismissal, Jerzon was held liable for deciding to repatriate Nato in violation of RA 8042.

Despite the mandatory language of Section 10, petitioner Questcore asserts that it should not be held solidarily liable in this case with the foreign employer Cosmo. It argues that it only facilitated Melody's deployment for the initial one-year contract and did not participate in the subsequent renewals, especially the 4th contract which was cut short when Cosmo dismissed Melody.

Petitioner's argument is unavailing.

The question of whether the solidary liability of a private recruitment agency under Section 10 of RA 8042 is limited to the original employment contract and the period indicated therein is not novel. For instance, in *Placewell International Services Corp. v. Camote*,[23] respondent was hired as a carpenter in the Kingdom of Saudi Arabia for a two-year contract. Once at the job site, the foreign employer found him incompetent and decided to terminate his services. Respondent pleaded to be retained and agreed to sign another employment contract with a lower salary. The Court held that the supposed termination of respondent was merely a ploy to pressure him to agree to a lower wage rate. The second contract is void as it is against our existing laws, morals, and public policy. Consequently, the original POEA-approved contract subsists, and Placewell remained solidarily liable for respondent's money claims in accordance with Section 10 of RA 8042.

Too, in *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*,[24] Datuman was deployed to Bahrain to work as a salesperson. Upon arrival, the employer took her passport and forced her to work as a domestic helper under a second contract with a much lower salary. In reversing the CA's finding that the

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21 G.R. No. 230211, October 6, 2021 [Per C.J. Gesmundo, First Division].
22 *Id.*, citing Article 299 of the Labor Code.
23 525 Phil. 817 (2006) [Per J. Ynares-Santiago, First Division].
24 591 Phil. 662 (2008) [Per J. Leonardo-De Castro, First Division].

solidary liability of the local agency is only limited to the first contract, the Court ruled that the execution of Datuman's subsequent agreement with the foreign employer before the expiration of the original one-year term contract is against the will of petitioner. It is a continuing breach of the original POEA-approved contract and may not be conveniently used by the recruitment agency to escape its mandated solidary liability.

Again, in *APQ Shipmanagement Co., Ltd. v. Caseñas*,[25] the local agent APQ refused to pay for the sickness and disability claims of seafarer Caseñas on the ground that his employment contract was extended from the original eight months to 26 months without its consent. The Court however found that the extension of contract was not voluntary on the part of Caseñas. The vessel he was assigned could not leave the port because of incomplete documents. Thereafter, Caseñas got sick as he and the rest of the vessel's crew were left to fend for themselves because they had no food and water and were not paid their salaries. Thus, the Court ruled that a seafarer's contract remains effective until he is signed off from the vessel and returns to the point of hire. Simply put, the obligations and liabilities of the local agency and its foreign principal do not end upon the expiration of the period stated in the contract. They are duty bound to repatriate the seafarer to the point of hire to effectively terminate the contract of employment.[26] Since APQ had actual knowledge that Caseñas was still on board the stranded vessel despite the expiration of his original contract, it was solidarily liable with the foreign employer for Caseñas' sickness claims and for his unpaid wages during the extended portion of the contract.

Still, in *Interorient Maritime Enterprises, Inc. v. NLRC*,[27] the Court underscored the responsibility of the foreign employer and the local agency to ensure the safety of the seafarer even after his employment contract expired. While being repatriated, seafarer Pineda missed his connecting flight to Manila and began to aimlessly wander the streets of Bangkok. Four days later, he was shot to death by Thai police while running amok with a knife in hand. Interorient was held liable despite its defense that Pineda's tragic death was a result of his own willful act. The Court rebuked Interorient for its imperviousness as it failed to observe precautionary measures when it allowed Pineda, who was later on found to be mentally ill, to travel alone. Under RA 8042, licensed local recruitment agencies are expected to extend assistance to deployed migrant workers, especially those in distress, those who are employed by vicious employers, or those staying in dangerous communities.[28]

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[25] 735 Phil. 300 (2014) [Per *J.* Mendoza, Third Division].

[26] *Id.*, citing Sections 2 and 18 (A) of POEA Memorandum Circular No. 010-10, October 26, 2010 [Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships], which state:
SECTION 2. *Commencement/Duration of Contract.* —
A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire and with a POEA approved contract. It shall be effective **until the seafarer's date of arrival at the point of hire upon termination of his employment** pursuant to Section 18 of this Contract.
SECTION 18. *Termination of Employment.* —
A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the ship, signs-off from the ship and **arrives at the point of hire.** (Emphasis supplied)

[27] 330 Phil. 493 (1996) [Per *J.* Panganiban, Third Division].

[28] *Becmen Service Exporter and Promotion, Inc. v. Spouses Cuaresma*, 602 Phil. 1058 (2009) [Per *J.* Ynares-Santiago, Third Division].

Recently, in *Corpuz, Jr. v. Gerwil Crewing Phils., Inc.*,[29] the seafarer assumed another job due to the non-accreditation of his foreign employer. He was made to board a different vessel wherein the working conditions brought about his medical repatriation. In attributing liability to the recruitment agency, the Court factored in its complacency and nonchalant attitude in not verifying the whereabouts of the seafarer after deployment.

In this case, the CA correctly ruled that petitioner Questcore's solidary liability with the foreign principal Cosmo was not terminated when Melody's first contract ended on May 10, 2014. Section 10 of RA 8042 expressly states that the liability of the recruitment agency "shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract." Here, the initial contract provides for an option to renew, and it is unlikely that petitioner was unaware that Melody was actually reemployed by Cosmo. As keenly observed by the NLRC, there was a subsisting recruitment agreement/contract of agency between Cosmo and petitioner, which coincided with Melody's entire stint in Ghana, Africa. The exchange of electronic communications between petitioner and Cosmo shows that Melody is only one of the many Filipino overseas workers deployed by petitioner to Cosmo's jobsite in Africa. To be sure, petitioner may not assume liability insofar as the other Filipino workers it deployed in Cosmo are concerned, while at the same time dispute its responsibilities as Melody's agent.[30] Precisely, this is why petitioner cannot invoke *Sunace International Management Services, Inc. v. NLRC*,[31] and harp on the alleged lack of privity or knowledge of the subsequent renewals of Melody's employment contract.

To stress, Article 18 of the Labor Code bans a foreign employer from directly hiring a Filipino worker for overseas employment.[32] Even assuming that Cosmo dealt directly with Melody for the renewal of her contract, petitioner is still jointly and solidarily liable with its foreign principal because under Article 18, the foreign employer does not have a personality to hire an OFW unless it acts through a licensed local manning agent. The act of petitioner and Cosmo in excluding Melody from their roster of agency-deployed employees after her initial contract, despite their subsisting contract of agency, is an attempt to circumvent the ban on direct hiring, which the Court cannot countenance.[33]

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29 G.R. No. 205725, January 18, 2021 [Per *J.* Gesmundo, Second Division].

30 *Rollo*, p. 93.

31 515 Phil. 779 (2006) [Per *J.* Carpio Morales, Third Division].

32 The ban on direct hiring under Article 18 of the Labor Code is subject to the following exceptions: direct hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary (POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, R.A. No. 8042, February 4, 2002).

33 *SRL International Manpower Agency v. Yarza, Jr.*, G.R. No. 207828, February 14, 2022 [Per *J.* Hernando, Second Division]. See also POEA Memorandum Circular No. 08, Series of 2018, which provides that **foreign employers with previous or current accreditation with any licensed Philippine recruitment agencies shall not be allowed to directly hire workers**. (Emphasis supplied)

In the similar case of *Princess Talent Center Production, Inc. v. Masagca*,[34] the Court rejected the local manning agent's disavowal of its liability concerning a worker's deployment premised on its alleged lack of knowledge or participation in the extension of the OFW's contract. Indeed, a local manning agent cannot hide behind the excuse of its supposed non-participation in acts leading to a worker's illegal dismissal and yet benefit from its foreign principal when it is convenient or profitable.[35]

At any rate, although petitioner is made to answer for the overseas worker's illegal dismissal claims, it is not left without remedy. Petitioner may seek reimbursement from Cosmo for whatever amount it paid to Melody for the money claims against the foreign employer.[36]

ACCORDINGLY, the Petition is **DENIED**. The Decision dated October 14, 2019 and Resolution dated July 13, 2020 issued by the Court of Appeals in CA-G.R. SP No. 09062-MIN are **AFFIRMED**. Petitioner Questcore, Inc. and its foreign principal Cosmo Seafoods Ltd., are ordered to pay respondent Melody A. Bumanglag the following: (1) wages for the unexpired portion of the employment contract; (2) unpaid wages; (3) cash payment in lieu of notice of termination in the total amount of Twenty Eight Thousand US Dollars (US$ 28,000.00); and (4) the full reimbursement of her placement fee, with 12% interest per annum from October 25, 2016 to the date that this Decision becomes final and executory. All the monetary awards shall earn legal interest at 6% per annum from the date of finality until full satisfaction.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

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[34] *Princess Talent Center Production, Inc. v. Masagca*, 829 Phil. 381 (2018) [Per J., Leonardo-De Castro, First Division].

[35] *SRL International Manpower Agency v. Yarza, Jr.*, G.R. No. 207828, February 14, 2022 <https://central.com.ph/scanpdf/G.R. No. 207828.pdf> [Per J., Hernando, Second Division].

[36] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per J., Leonen, *En Banc*].

WE CONCUR:

MARVIC M.V. F. LEONEN
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC M.V. F. LEONEN
Senior Associate Justice
Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice