



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated May 14, 2021 which reads as follows:

“G.R. No. 224234 (Ma. Shiela Ubaña,¹ Alfonso Cervero, Jena Fetalino, Bradley Hannam and Faisal Durrani-Khan v. Edward L. Du, and Nomad Sports Club).

The petition assails the Decision² dated June 29, 2015 and Resolution³ dated April 19, 2016 rendered by the Court of Appeals (CA) which found no grave abuse of discretion on the part of respondent Judge Antonio M. Eugenio, Jr. in granting respondent Edward Du’s (Du) motion for leave to file an amended and supplemental petition.

Respondent Nomad Sports Club (NSC) is a non-stock, non-profit corporation existing under Philippine law.⁴ Ma. Shiela Ubaña, Alfonso Cervero, Jena Fetalino, Bradley Hannam and Faisal Durrani-Khan (*petitioners*) are, or have been, officers and/or members of the Board of Directors of NSC,⁵ while Du is a member of NSC.⁶

The record reveals that NSC leased parcels of land (*subject properties*) owned by E.A. Nersan Enterprises Corporation (*Nersan*) located in Parañaque City. The contract of lease dated August 16, 2003 between NSC and Nersan contains a provision granting NSC the

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¹ Also referred to as “Ma. Shiela Ubana” and “Ma. Shiela Ubama” in some parts of the *rollo*.

² *Rollo*, pp. 9-21; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Noel G. Tijam (now a retired Member of this Court) and Mario V. Lopez (now a Member of this Court), concurring.

³ *Id.* at 22-23.

⁴ *Id.* at 31.

⁵ *Id.*

⁶ *Id.* at 388.

preferential right to purchase the subject properties in case Nersan decides to sell them.⁷

Nersan consequently decided to sell the subject properties, and NSC likewise decided to exercise its preferential right to purchase them. In a special meeting, the NSC Board of Directors approved a Board Resolution⁸ authorizing the purchase of the subject properties. NSC and Nersan then entered into a Memorandum of Agreement⁹ wherein they agreed on the sale of 26,013 square meters of land for the total purchase price of ₱114,977,460.00.¹⁰

On April 7, 2010, Du filed with the Regional Trial Court of Manila (RTC) a Petition¹¹ for “*Annulment of all ultra vires acts of the Board with Prayer for a Writ of Preliminary Injunction*” against Jonathan Thorp, Faisal Durrani-Khan, Ma. Shiela Ubaña, Matthew Freeston, Conny Dolonius,¹² Iain Sinclair, Thomas Whitwell, Bradley Hannam, and Steve Arthur, who were alleged to be directors and officers of NSC at the time. Denominated as a derivative suit, the petition sought to enjoin NSC’s purchase of the subject properties for being *ultra vires*, since NSC was allegedly not qualified to acquire private lands under the Constitution¹³ and the purchase was not ratified by at least 2/3 of NSC’s members as required by the Corporation Code.¹⁴ The petition alleged three (3) causes of action, namely:

FIRST CAUSE OF ACTION

The purchase of the Subject Properties is *ultra vires* because petitioner Club is not qualified to acquire private lands under Sec. 7, in relation to Secs. 2 and 3, Article XII of the 1987 Constitution.¹⁵

SECOND CAUSE OF ACTION

Due to the non-compliance with Section 42 of the Corporation Code which requires ratification by at least 2/3 of the members of the Club, the purchase of the Subject Properties is *ultra vires*.¹⁶

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⁷ Id. at 10.

⁸ Id. at 180-181.

⁹ Id. at 600-608.

¹⁰ Id. at 32-33; 602.

¹¹ Id. at 207-231.

¹² Also referred to as “Coney Dolonius” in some parts of the *rollo*.

¹³ *Rollo*, p. 216.

¹⁴ Id. at 220-222.

¹⁵ Id. at 216.

¹⁶ Id. at 220.

THIRD CAUSE OF ACTION

Respondents are guilty of gross negligence or bad faith in directing the affairs of the corporation and they shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.¹⁷

On April 8, 2010, Du filed a *Very Urgent Ex Parte Motion for the Issuance of a Temporary Restraining Order*.¹⁸ The RTC set a hearing for the motion and received the parties' evidence. In an Order¹⁹ dated April 22, 2010, it denied the motion. Thereafter, Du's application for the issuance of a writ of preliminary injunction was heard.²⁰ Before the hearings were terminated, the RTC issued a *Status Quo* Order on May 12, 2010, directing the parties not to undertake any action relative to the purchase of the subject properties, "so as not to render the issue moot and academic."²¹ The RTC likewise issued a Writ of Preliminary Injunction on August 11, 2010.²²

Subsequently, on January 12, 2011, Du filed a *Motion for Leave to Amend and Supplement Petition and Motion to Admit Attached Amended and Supplemental Petition*.²³ He alleged that since the filing of the petition and the issuance of the writ of preliminary injunction, several transactions and events had transpired. Particularly, NSC's Articles of Incorporation was amended and the composition of its Board of Directors changed. Moreover, a deed of absolute sale had been executed between NSC and Nersan, and payments were made for the purchase of the subject properties. Du argued that in the interest of justice, he should be allowed to amend the original petition and add to its cause of action to conform to the evidence, as well as file a supplemental petition in accordance with Sections 5 and 6, respectively, of Rule 10 of the Rules of Court. He also prayed for the RTC to admit the amended and supplemental petition attached to the motion, which alleged the following causes of action:

FIRST CAUSE OF ACTION

The purchase of the Subject Properties is *ultra vires* because petitioner Club is not qualified to acquire private lands under Sec. 7, in relation to Secs. 2 and 3, Article XII of the 1987 Constitution.²⁴

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¹⁷ Id. at 222-223.

¹⁸ Id. at 235-238.

¹⁹ Id. at 275-277.

²⁰ Id. at 40.

²¹ Id. at 331.

²² Id. at 381.

²³ Id. at 380-385.

²⁴ Id. at 402.

SECOND CAUSE OF ACTION

The Amendment to the Articles of Incorporation was not done for a legitimate reason as it was done in violation of the *status quo* order and to circumvent the Constitutional prohibition on foreign ownership of land.²⁵

THIRD CAUSE OF ACTION

Since the [Amendment to the Articles of Incorporation] was not done for a legitimate purpose, there is no compliance with Section 42 of the Corporation Code which requires ratification by at least 2/3 of the members of the Club; thus, the purchase of the Subject Properties is *ultra vires*.²⁶

FOURTH CAUSE OF ACTION

The Deed of Absolute Sale was executed in violation of the *Status Quo* Order and in contravention of the Constitutional Prohibition on foreign ownership of land.²⁷

FIFTH CAUSE OF ACTION

Respondents are guilty of gross negligence or bad faith in directing the affairs of the corporation and they shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.²⁸

Petitioners opposed the motion through their February 3, 2011 Comment.²⁹ Nonetheless, on March 10, 2011, the RTC issued an Order³⁰ granting the motion and admitting the amended and supplemental petition attached thereto. It held that in the light of the clear tenor of Sec. 5, Rule 10 of the Rules of Court, petitioners' assertion that the amendment to the petition is not possible as trial has not commenced is too simplistic. The records show that petitioners have formally offered in evidence matters that precipitated the amendment prayed for. Moreover, as regards petitioners' submission that the trial court has no jurisdiction over the occurrences that respondent sought to include in the petition, the RTC held that the cause of action remained practically the same, which is the annulment of all the *ultra vires* acts of the NSC's Board of Directors.

Dissatisfied with this ruling, petitioners filed a Petition for *Certiorari* (With Urgent Application for a Temporary Restraining

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²⁵ Id. at 406.

²⁶ Id. at 408.

²⁷ Id. at 411.

²⁸ Id. at 413.

²⁹ Id. at 426-432.

³⁰ Id. at 145-146.

Order and/or Writ of Preliminary Injunction)³¹ with the CA. They cited the following grounds to support their prayer for the annulment and setting aside of the March 10, 2011 Order of the RTC:

Public Respondent committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing the assailed order, considering that:

I.

The reliance on Section 5, Rule 10 of the Revised Rules of Court in allowing the amendment of private respondent Du's original petition is misplaced as there were no new issues tried by the parties which were not raised in the pleadings.

Assuming *arguendo* that the hearings on the applications for a TRO and/or the issuance of a writ of preliminary injunction can be considered as trials, there were no new issues raised during said hearings. The issues in the case as set forth in the pre-trial briefs of the parties remain the same even with the introduction of the amended [Articles of Incorporation] and the 2010 [General Information Sheet].

II.

The court *a quo* has no jurisdiction over the occurrences that private respondent Du seeks to include in his original petition by way of supplement and over his prayer to annul the Deed of Absolute Sale. An action to annul such deed, being a real action, it is within the jurisdiction of the appropriate court in Parañaque City where the subject property is situated.³²

On June 29, 2015, the CA rendered the assailed Decision dismissing the petition. It held that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it allowed the amendment of the petition. Sec. 5, Rule 10 of the Rules of Court does not limit the amendment of the pleadings to issues introduced in the main trial. In using the word "tried," the provision does not distinguish between trial during the preliminary injunction stage, or trial on the main case. Where the law does not distinguish, neither do [We] distinguish.³³ Moreover, the issues on the validity of the amended Articles of Incorporation and General Information Sheet were not raised in Du's petition, although these were introduced in evidence during the hearing on the application for preliminary injunction. In accordance with prevailing jurisprudence, Du's petition is deemed amended to include these issues.³⁴

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³¹ Id. at 333-357.

³² Id. at 14-15.

³³ Id. at 17.

³⁴ Id. at 17-18.

Likewise, the CA held that the filing of a supplemental petition is warranted under Sec. 6, Rule 10 of the Rules of Court, which sanctions the filing of a supplemental pleading setting forth transactions, occurrences or events that have happened since the date of the pleading sought to be supplemented. In this case, the purchase of the subject property and its subsequent registration were events or transactions that occurred after the petition was filed. Hence, it became necessary for Du to pray for the annulment of the deed of sale and the titles as well. The supplemental petition was meant to supply deficiencies in aid of the original petition and not to dispense with or substitute the latter. It was related to the claim and founded on the same cause of action. Thus, the RTC retains jurisdiction over the case. The purchase of the subject property and execution of the deed of sale can still be declared *ultra vires* acts if made in violation of the constitutional prohibition on foreign ownership of land. Furthermore, petitioners were aware that the *status quo* order and the writ of preliminary injunction were issued directing them not to undertake any action related to the purchase of the subject property. Hence, they cannot be permitted to escape the consequences of their deliberate actions.³⁵

The dispositive portion of the CA decision states:

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.³⁶

Feeling aggrieved, petitioners brought the present Petition³⁷ on the following grounds:

The Court of Appeals rendered the questioned *Decision* and issued the questioned *Resolution* admitting the *Amended/Supplemental RTC Petition* in a manner not in accordance with law and settled jurisprudence considering that:

- I. The RTC-Manila has no jurisdiction over the subject matter pleaded in the *Amended/Supplemental RTC Petition* since the issues raised therein are matters beyond the jurisdiction of the RTC-Manila as a Special Commercial Court.
- II. Indeed, the admission of the *Amended/Supplemental RTC Petition* is tantamount to a collateral attack on the transfer certificates of title covering the subject properties.

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³⁵ Id. at 18-19.

³⁶ Id. at 20.

³⁷ Id. at 27-78.

- A. As the new causes of action partake of a real action involving title to or recovery of real property, venue has also been improperly laid.
- III. The admission of the *Amended/Supplemental RTC Petition* effectively sanctions the blatant splitting of a cause of action by respondent Du involving *the subject properties*.
- IV. The reliance on Section 5, Rule 10 of the Rules of Court as basis to justify the admission of the *Amended/Supplemental RTC petition* is erroneous considering that a supplemental pleading may only be filed to supply deficiencies in an original pleading, but not to introduce new and independent causes of action not found in the original pleading.³⁸

Petitioners argue that the original petition was intended to vest the RTC only with intra-corporate jurisdiction. As special commercial court, the RTC cannot admit causes of action that are within the ambit of ordinary civil actions³⁹ such as those raised by Du in his amended and supplemental petition, to wit: (1) nullification of the deed of absolute sale, (2) non-registration and/or cancellation of the subject transfer certificates of title (*TCTs*) issued in favor of NSC, and (3) recovery of real property.⁴⁰ Moreover, by seeking the annulment of the deed of absolute sale and its registration, Du is making a collateral attack on the subject *TCTs*, which is not allowed under Sec. 48 of Presidential Decree No. 1529.⁴¹ Petitioners likewise assert that actions involving title to or recovery of real property are real actions that should be commenced and tried in the province where the property is located. Since the subject properties are located in Parañaque City and not in the City of Manila, venue is improperly laid.⁴²

On another matter, petitioners aver that the admission of the amended and supplemental petition sanctioned the splitting of a cause of action by Du involving the subject properties as the relief he sought therein is the same relief he sought in another case pending before the RTC of Parañaque.⁴³

Finally, petitioners argue that in praying for the annulment of the deed of absolute sale in the amended and supplemental petition,

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³⁸ Id. at 44-45.

³⁹ Id. at 51.

⁴⁰ Id. at 53.

⁴¹ Id. at 56. Sec. 48 of P.D. No. 1529 states:

Sec. 48. *Certificate not subject to collateral attack* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled, except in a direct proceeding in accordance with law.

⁴² Id. at 59-60.

⁴³ Id. at 62.

Du did not merely reinforce or augment the allegations in his original petition, but introduced new causes of action that are not covered in the original petition.⁴⁴

We emphasize at the outset that this appeal emanated from an original special civil action for *certiorari* under Rule 65 filed before the CA. In cases such as this, the question of law presented before the Court is whether the CA was correct in ruling that the lower court did or did not act with grave abuse of discretion amounting to lack or excess of jurisdiction.⁴⁵ In this case, the issue that the Court must resolve is whether the CA correctly held that no grave abuse of discretion attended the RTC's order granting Du's motion for leave to amend and supplement his original petition and admitting the amended and supplemental petition attached to the motion.

After due consideration of the issues raised in the petition, We find no reversible error on the part of the CA in dismissing the petition for *certiorari* before it.

In an action for *certiorari*, the petitioner must prove grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. Grave abuse of discretion is defined as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. But mere abuse of discretion is not enough. It must be *grave* abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.⁴⁶

Significantly, not every error committed by a tribunal amounts to grave abuse of discretion. A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for *certiorari*. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.⁴⁷

In this case, no grave abuse of discretion attended the RTC's questioned order.

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⁴⁴ Id. at 66.

⁴⁵ See *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, 820 Phil. 235, 246-247 (2017).

⁴⁶ *Solvic Industrial Corporation v. NLRC*, 357 Phil. 430, 438 (1998).

⁴⁷ *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, supra note 44, at 247.

To place things in perspective, at the time of the filing of the original petition, Du was only aware of the impending purchase by NSC of the subject properties. He prayed for the annulment of therein respondents' *ultra vires* acts, which included the said purchase.

After the filing of the original petition, and in the hearings conducted on his application for the issuance of a writ of preliminary injunction, Du was made aware of certain developments, such as the amendment of NSC's Articles of Incorporation and the filing of NSC's 2010 General Information Sheet which revealed a new set of officers of the NSC. More importantly, he came to know that a deed of absolute sale had already been executed.

In the light of these events, it is only proper for Du to amend and supplement his petition to make it conform to the evidence. This exercise is sanctioned by Secs. 5 and 6, Rule 10 of the Rules of Court, which respectively provide:

Section 5. *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. **Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time**, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

Section 6. *Supplemental pleadings.* — Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading **setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented**. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading. (emphases supplied)

We have held in *Central Bank Board of Liquidators v. Banco Filipino Savings and Mortgage Bank*⁴⁸ that the option of a party-litigant to amend a pleading is not without limitations. If the purpose is to set up a cause of action not existing at the time of the filing of the complaint, amendment is not allowed. If no right existed at the time

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⁴⁸ 806 Phil. 156 (2017).

the action was commenced, the suit cannot be maintained, even if the right of action may have accrued thereafter.

Likewise, the option of a party-litigant to supplement a pleading is not without limitation. A supplemental pleading only serves to bolster or add something to the primary pleading. Its usual function is to set up new facts that justify, enlarge, or change the kind of relief sought with respect to the same subject matter as that of the original complaint.⁴⁹ The supplemental complaint must be founded on the same cause of action as that raised in the original complaint.⁵⁰

The limitations mentioned above are not present in this case. Stripped to the core, the causes of action raised in the original petition are the *ultra vires* acts of petitioners in relation to the purchase of the subject properties. The causes of action did not change with the filing of the amended and supplemental petition, which also seeks to nullify those *ultra vires* acts.

Petitioners argue that Du raised causes of action in the amended and supplemental petition that are new and which should properly be brought in an ordinary civil action, to wit: (1) the nullification of the Deed of Absolute Sale, (2) non-registration and/or cancellation of TCTs issued in favor of NSC, and (3) recovery of real property.⁵¹ However, this is an overestimation of the facts.

To illustrate, the contested prayer in the original petition and the amended and supplemental petition respectively state:

Original Petition	Amended and Supplemental Petition
<p>WHEREFORE, petitioners Edward L. Du and Nomad Sports Club respectfully pray that:</p> <p>x x x x</p> <p>(ii) After due consideration on the merits, a Decision be issued by this Honorable Court:</p> <p>x x x x</p>	<p>WHEREFORE, petitioners Edward L. Du and Nomad Sports Club respectfully pray that:</p> <p>x x x x</p> <p>(ii) After due consideration on the merits, a Decision be issued by this Honorable Court:</p> <p>x x x x</p>

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⁴⁹ Id. at 170.

⁵⁰ Id.

⁵¹ *Rollo*, p. 53.

(b) annulling all <i>ultra vires</i> acts of the respondents, including the purchase of the Subject Properties; xxx ⁵²	(c) annulling all <i>ultra vires</i> acts of respondents <u>as officers and directors of Petitioner Club</u> , including the purchase of the Subject Properties <u>and the Deed of Absolute Sale</u> ; and, thus, <u>the Deed of Sale should not be registered with Respondent, Register of Deeds of Parañaque City.</u> ⁵³
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It can readily be noted from the table above that in his amended and supplemental petition Du did not directly pray for the nullification of the deed of sale, or the cancellation of the TCTs issued to NSC, or the recovery of property. On the contrary, he prayed for the annulment of the *ultra vires* acts of petitioners, which included the purchase of the subject properties. This is the same prayer as in the original petition. The only difference is that he also mentioned the annulment of the deed of absolute sale.

To be sure, however, such mention of the nullification of the deed of absolute sale did not change the cause of action. Du's objection to the purchase of the subject properties is anchored on his belief that it was made by NSC's Board of Directors and officers without authority, and for no other reason. The mention of the deed of absolute sale does not detract from his main cause of action as it squarely falls within the framework of his argument, which is that the annulment of all of petitioners' *ultra vires* acts in relation to the purchase of the subject properties should entail the nullification of all the transactions related to the purchase, including the execution of the deed of absolute sale. Certainly, even if Du did not mention this document, the RTC would still have touched on it in deciding whether to grant the petition.

As regards petitioner's argument that the amended and supplemental petition amounts to a collateral attack on the TCTs covering the subject properties, suffice it to state that there is no allegation therein that questions the validity of the TCTs. In fact, it did not allege that TCTs have already been issued. It merely argued that, on the basis of the supposed *ultra vires* acts of petitioners, the deed of absolute sale should not be registered by the Register of Deeds.⁵⁴ In this view, to claim that a collateral attack is being made on the TCTs is speculative. Besides, the RTC is the appropriate tribunal that can competently make a determination of whether such collateral attack exists. It just needs to be given the chance to continue hearing the case and to make the appropriate ruling.

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⁵² Id. at 230.

⁵³ Id. at 420-421.

⁵⁴ Id. at 413.

In sum, Du kept the statement of his causes of action within the parameters of an intra-corporate dispute. He filed the amended and supplemental petition to make it conform to the evidence, while maintaining adherence to his main causes of action. Consequently, the RTC did not commit grave abuse of discretion in admitting the amended and supplemental petition, and the CA did not err in sustaining the position taken by the RTC.

The prevailing rule is that the amendment of pleadings should be attended with liberality, with the end of obtaining substantial justice for the parties.⁵⁵ We thus agree with the CA when it held, citing jurisprudence, that:

The rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party like in the case at bar. The courts should be liberal in allowing amendments to pleadings to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial. Furthermore, amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case, may so far as possible, be determined on its real facts and in order to speed up the trial of the case or prevent the circuitry of action and unnecessary expense.⁵⁶

Finally, as regards petitioners' argument that the admission of the amended and supplemental petition sanctioned the splitting of a cause of action by Du involving the subject properties, as the relief he sought therein is the same relief he sought in another case pending before the RTC of Parañaque,⁵⁷ suffice it to state that this matter is being raised for the first time on appeal. It is settled that, to ensure fairness in proceedings, issues that were not alleged or proved before the lower court cannot be decided for the first time on appeal.⁵⁸

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated June 29, 2015 and Resolution dated April 19, 2016 in CA-G.R. SP No. 119509 are **AFFIRMED**.

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⁵⁵ *Central Bank Board of Liquidators v. Banco Filipino Savings and Mortgage Bank*, supra note 48, at 168.


⁵⁶ *Rollo*, p. 20.

⁵⁷ *Id.* at 62.

⁵⁸ *Chinatrust (Phils.) Commercial Bank v. Turner*, 812 Phil. 1, 16 (2017).

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
SM

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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