

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BF CITILAND CORPORATION,
Petitioner,

G.R. No. 224912

Present:

- versus -

CAGUIOA, J., *Acting Chairperson*,
REYES, J. JR.,
HERNANDO,
LAZARO-JAVIER, and
ZALAMEDA, JJ.

BANGKO SENTRAL NG
PILIPINAS,
Respondent.

Promulgated:

16 OCT 2019

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DECISION

REYES, J. JR., J.:

In forum shopping, what is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.¹

The Facts

In May 2004, petitioner BF Citiland Corporation (BF Citiland) executed a Deed of Conveyance over its real property, covered by Transfer

* Designated additional member per Raffle dated October 9, 2019 in lieu of Associate Justice Antonio T. Carpio who recused himself from the case due to close association to counsel of a party.

¹ *Fontana Development Corp. v. Vukasinovic*, 795 Phil. 913, 924-925 (2016).

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Certificate of Title (TCT) No. 218687, in favor of Banco Filipino Savings and Mortgage Bank (Banco Filipino), as payment for subscription of shares of stocks amounting to ₱130 Million. Banco Filipino used the property as collateral to secure its Special Liquidity Facilities loan (SLF loan) from respondent Bangko Sentral ng Pilipinas (BSP). However, the property's title was not yet transferred to Banco Filipino pending the Securities and Exchange Commission's (SEC's) approval of the investment and the BSP's favorable endorsement. Thus, Banco Filipino asked BF Citiland to execute a third-party mortgage in favor of BSP. On July 2, 2004, BF Citiland signed the mortgage. On July 13, 2004, BF Citiland executed another deed of real estate mortgage over the same property as accommodation mortgagor to secure Banco Filipino's SLF loan from the BSP, this time amounting to ₱101 Million.²

In October 2004, BF Citiland learned that BSP disapproved the conveyance of the property in exchange for Banco Filipino stocks, so it rescinded the deed. Banco Filipino agreed because it was unable to deliver the equivalent value of the shares of stock.³

On March 17, 2011, Banco Filipino was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC).⁴

In 2011,⁵ BSP filed a petition for extrajudicial foreclosure of real estate mortgage against BF Citiland covering TCT No. 218687. On October 25, 2011, BF Citiland received a notice of sheriff's sale from the Clerk of Court and *Ex-Officio* Sheriff of the Makati Regional Trial Court (RTC).⁶

On November 18, 2011, BF Citiland filed a petition for declaratory relief and prohibition with application for the issuance of writ of preliminary injunction/temporary restraining order docketed as **Civil Case No. 11-1146 (declaratory relief case)** against BSP and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff to determine BSP's right to foreclosure and to prevent them from conducting the public auction. It was raffled to **Makati RTC, Branch 143**.⁷

On August 2, 2012, the Makati RTC Clerk of Court proceeded with the auction sale of the mortgaged property, in which BSP was the highest bidder at ₱273,054,000.00.⁸

On November 8, 2012, BF Citiland filed an action for annulment of mortgage and foreclosure sale with application for preliminary injunction/temporary restraining order docketed as **Civil Case No. 12-1079**

² *Rollo*, pp. 11, 28.

³ *Id.* at 11.

⁴ *Id.* at 28.

⁵ *Id.* at 12.

⁶ *Id.* at 28.

⁷ *Id.*

⁸ *Id.*



(**annulment case**) against Banco Filipino, BSP, and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff to annul the following: (1) the deeds of real estate mortgage; (2) the auction sale; (3) the certificate of sale; and (4) the annotation on Banco Filipino's certificate of title. It was raffled to **Makati RTC, Branch 141**.⁹

BSP filed individual motions to dismiss in the Makati RTC Branches 141 and 143 on the ground of forum shopping. Branch 141 denied the motion to dismiss in the annulment case on July 5, 2013,¹⁰ and the motion for reconsideration on December 4, 2013.¹¹ The Makati RTC reasoned that there is no forum shopping since the issues between the two actions are different.¹²

However, Branch 143 ruled differently in the declaratory relief case. In its January 29, 2014 Order,¹³ the Makati RTC, Branch 143 dismissed the petition for declaratory relief because BF Citiland committed forum shopping. BF Citiland did not move for reconsideration, which resulted in the order becoming final and executory.¹⁴

BSP filed an omnibus motion before Branch 141 for the trial court to take judicial notice of the January 29, 2014 Order of Branch 143 and to dismiss the annulment case.¹⁵ On July 21, 2014,¹⁶ Branch 141 denied the omnibus motion because a similar motion to dismiss due to forum shopping had been previously filed, acted upon, and had attained finality. Branch 141 explained that even if it takes judicial notice of the dismissal of the case, this would not result to the dismissal of the annulment case as the court has expressly declared that dismissal shall only apply to the declaratory relief case.¹⁷

BSP moved for reconsideration, which Branch 141 denied in its November 8, 2014 Order.¹⁸ Aggrieved, BSP filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals (CA), docketed as CA-G.R. SP No. 138747.

The CA Decision

On October 9, 2015, the CA rendered a Decision¹⁹ granting the petition for *certiorari* and dismissed the annulment case.

⁹ Id. at 28-29.

¹⁰ Id. at 485-489.

¹¹ Id. at 519.

¹² Id. at 29.

¹³ Id. at 71-73.

¹⁴ Id. at 29.

¹⁵ Id. at 29-30.

¹⁶ Id. at 88-90.

¹⁷ Id.

¹⁸ Id. at 30, 240.

¹⁹ Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Melchor Q.C. Sadang, concurring; id. at 27-36.

The CA defined forum shopping as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It pertains to the institution of two or more actions or proceedings based on the same cause so that one or the other would make a favorable disposition. Here, the CA ruled that BF Citiland was securing an advantage by filing two identical cases consecutively.²⁰

The elements of forum shopping are: (1) the identity of parties or parties that represent the same interests in both actions; (2) the identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration, regardless of which party is successful.²¹

The CA explained that the true test in identity of causes of action is not in the form of action, but on whether the same evidence would support and establish both causes of action.²²

The CA resolved that there is identity of parties and of causes of action in the declaratory relief case and the annulment case.²³ The CA found no difference in both cases, because both were based on a single issue: whether or not the foreclosure of the real estate mortgages was proper while Banco Filipino is under receivership.²⁴ Even if BF Citiland added grounds to prove the nullity of the real estate mortgages, the same pieces of evidence were still required to prove its claim in either case.²⁵

The CA demonstrated the similarity of causes of action in a comparative table:²⁶

Facts alleged in Civil Case No. 11-1146	Facts alleged in Civil Case No. 12-1079
As stated in the above discussion, the debtor, Banco Filipino, cannot be compelled as yet to perform its obligations under the Promissory Notes executed in favor of the BSP due to the prohibition against payments while said Bank is under the receivership of the PDIC. Since the principal obligation, embodied [in the] Promissory Notes executed in favor of the BSP, cannot be enforced against the principal, then the	As stated in the above discussion, the debtor, Banco Filipino, cannot be compelled as yet to perform its obligations under the Promissory Notes executed in favor of the BSP due to the prohibition against payments while said Bank is under the receivership of the PDIC. Since the principal obligation, embodied [in the] Promissory Notes executed in favor of the BSP, cannot be enforced against the principal, then the

²⁰ Id. at 32.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id. at 32-33.

²⁵ Id. at 33-34.

²⁶ Id. at 33.

accessory contract thereto, <i>i.e.</i> , the real estate mortgage executed by third-party mortgagor BF Citiland likewise cannot be enforced. ²⁷	accessory contract thereto, <i>i.e.</i> , the real estate mortgage executed by third-party mortgagor BF Citiland likewise cannot be enforced. ²⁸
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The CA elucidated on the nature of a petition for *certiorari* and the extent of grave abuse of discretion. A petition for *certiorari* is a remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave of abuse discretion amounting to lack or excess of jurisdiction. It is only available when there is no appeal, nor any plain, speedy, and adequate remedy at law. Grave abuse of discretion exists when the respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.²⁹

Here, the CA determined that the Makati RTC, Branch 141 committed grave abuse of discretion for failing to apply the rule against forum shopping despite knowing that BF Citiland had previously filed a case. When there is a finding of forum shopping, the penalty is dismissal of both cases as a punitive measure to those who trifle with the orderly administration of justice.³⁰

The CA discussed the settled rule in forum shopping. If forum shopping is willful and deliberate, both or all actions shall be dismissed with prejudice; otherwise, it shall be dismissed without prejudice. Here, the CA dismissed the case without prejudice, because of the absence of willful and deliberate intent to violate the rule against forum shopping on the part of BF Citiland. It indicated in its Certification of Non-Forum Shopping in Civil Case No. 12-1079 that Civil Case No. 11-1146 was pending. Furthermore, BSP was unable to substantiate that BF Citiland was in bad faith in committing forum shopping.³¹

BF Citiland moved for reconsideration, which the CA denied in its May 26, 2016 Resolution.³² Unsuccessful, it filed before the Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.³³

The Issue Presented

The sole issue presented before the Court is whether or not BF Citiland committed forum shopping.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 31-32.

³⁰ Id., p. 34.

³¹ Id. at 34-35.

³² Id. at 38-42.

³³ Id. at 9-21.

The Court's Ruling

The Petition is denied.

In its Petition, BF Citiland argued that the elements of forum shopping are absent, because: (1) there is lack of common cause of action since declaratory relief is a special civil action, while the annulment case is an ordinary civil action; and (2) there are no common rights asserted and reliefs prayed for since one action seeks a declaration on the right of the mortgagee to foreclose the property, while the other action aims to annul the deeds of mortgage, the auction sale, and the certificate of sale.³⁴

In its Comment, BSP raised technical issues in the Petition: (1) lack of competent evidence of identity in the Verification and Certification of Non-Forum Shopping;³⁵ and (2) failure to attach material portions of the record as stated in Section 4(d), Rule 45 of the Rules of Court, making the Petition dismissible.³⁶ Respondent BSP also presented arguments on the correctness of the CA's ruling on the presence of forum shopping.³⁷

In its Reply, BF Citiland did not tackle any of the technical issues and focused its discussion on the substantial issues.³⁸

I. Technical Issue: Lack of competent evidence of identity in the Verification and Certification of Non-Forum Shopping

In *Jorge v. Marcelo*,³⁹ the Court allowed the non-presentation to the notary public and non-indication in the verification and certification of non-forum shopping of the affiant's competent evidence of identity, because he/she was personally known to the notary public, to wit:

The fact that it contained no details of her competent evidence of identity is inconsequential simply because its presentation may be excused or dispensed with. If it is not required for the affiant to show competent evidence of identity in case he/she is personally known to the notary public, with more reason that it is unnecessary to state the details of such competent evidence of identity in the notarial certificate.⁴⁰

Such is not the case here. The jurat of BF Citiland's Verification and Certification of Non-Forum Shopping does not mention that the affiants are personally known to the notary public. It clearly states that the affiants presented competent evidence of identity to the notary public and yet there were no entries under Identification and Date/Place of Issuance.

³⁴ Id. at 14-20.

³⁵ Id. at 152-156.

³⁶ Id. at 157-159.

³⁷ Id. at 152-153, 160-188.

³⁸ Id. at 600-603.

³⁹ G.R. No. 232989, March 18, 2019.

⁴⁰ Id.

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SUBSCRIBED AND SWORN to before me, a notary public for and in behalf of Parañaque this 7th day of July 2016, **affiants exhibited to me as competent evidence of identity**: (Emphasis supplied)

	Identification	Date/Place of Issuance
CARMELO M. MENDOZA		
ANNA FRANCESCA ABAD ⁴¹		

Proofs of competent evidence of identities are required to ensure that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith.⁴² With the absence of the details of competent evidence of identity, the verification and certification are defective.

However, the Court had previously held that a defective verification and certification is not fatal to a case. In several cases,⁴³ the Court entertained a petition despite a defect in the verification and certification, and reasoned that “the verification is only a formal, not a jurisdictional, requirement that the Court may waive.” In these cases, the Court considered it more appropriate to resolve the action based on merit and substantive issues, and not on technical issues.

Here, the Court had examined the pleadings of the parties and resolved to deny the petition based on substantive and technical grounds. Form follows substance. The technical grounds play a secondary role in our ruling and are only additional reasons for the denial of the petition. Still, the Court reminds the members of the bar to conform to the formal requirements under the Rules of Court for the proper and efficient administration of justice.

II. Technical Issue: Failure to attach material portions of the record as stated in Rule 45, Section 4(d) of the Rules of Court

Section 4, Rule 45 of the Rules of Court enumerates the contents of a petition for review on *certiorari*:

SEC. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a

⁴¹ Rollo, p. 23.

⁴² *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017, 846 SCRA 244, 260.

⁴³ *Orbe v. Filinvest Land, Inc.*, G.R. No. 208185, September 6, 2017, 839 SCRA 72, 104, citing *Galicto v. Aquino III*, 683 Phil. 141, 175 (2012); *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz* 622 Phil. 886, 900 (2009); *Victorio-Aquino v. Pacific Plans, Inc.*, 749 Phil. 790, 806-807 (2014); *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 788 (2015).

motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; **(d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition;** and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. (Emphasis supplied)

In *Cancio v. Performance Foreign Exchange Corp.*,⁴⁴ the Court held that non-compliance with Section 4, Rule 45 of the Rules of Court does not automatically result to dismissal of the case. Thus:

The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition “be accompanied by [x x x] such material portions of the record as would support the petition,” This Court may still give due course if there is substantial compliance with the Rules.

Here, BF Citiland attached the following documents: (1) certified true copies of the CA Decision and Resolution subject of this Petition; (2) complaint in the annulment case; (3) petition in the declaratory relief case; (4) January 29, 2014 Makati RTC, Branch 143 Order; (5) Omnibus Motion; (6) July 21, 2014 Makati RTC, Branch 141 Order; (7) November 8, 2014 Makati RTC, Branch 141 Order; and (8) BSP’s petition for *certiorari* filed in the CA.

The Court finds the above attachments as substantial compliance with Section 4(d), Rule 45 of the Rules of Court as it supports BF Citiland’s position. BF Citiland attached copies of the assailed CA Decision and Resolution, as well as the RTC’s orders and pleadings that are pertinent to its position. A petitioner is not required to attach all pleadings, court orders/processes, exhibits, or documents of the case, but only those which are material and relevant to the issue/s presented in the petition.

III. Substantive Issue: Whether or not the elements of forum shopping are present

In *Malixi v. Baltazar*,⁴⁵ the Court discussed the concept of forum shopping:

Forum shopping is generally judicial. It exists:

[x x x] [W]henver a party “repetitively avail[s] of
several judicial remedies in different courts,

⁴⁴ G.R. No. 182307, June 6, 2018.

⁴⁵ Supra note 40, at 278-279.

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simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court.” It has also been defined as “an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.” Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.

The test to determine whether or not forum shopping was committed was explained in *Dy, et al. v. Yu, et al.*:

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element of *lis pendens* is present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, **the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. If a situation of *lis pendens* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed.** (Citations omitted; emphases supplied)

Here, the elements of forum shopping are present.

First, the petitioner/complainant in the declaratory relief case and the annulment case is the same, BF Citiland. There are common respondents in the two actions, BSP and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff. The only difference is Banco Filipino, who was impleaded in the annulment case, but not in the declaratory relief case. However, even if Banco Filipino was not a party in the declaratory relief case, it still has an interest in its outcome because the foreclosure of the mortgages affects its SLF loan from BSP. With the identity of parties or interests in both cases, one of the elements of forum shopping is present.

Second, the declaratory relief case and the annulment case were filed after BSP foreclosed the mortgages on BF Citiland's property. The declaratory relief case assailed BSP's right to foreclose the mortgage while Banco Filipino was under receivership and sought to prevent the public auction. The annulment case aimed to nullify several documents and

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transactions, all related to the foreclosure of the mortgaged property. The first action was filed prior to the public auction, while the second action was filed thereafter.

In short, the two actions have a common set of facts and transactions — the foreclosure of mortgages. Both were aimed to protect BF Citiland's right to retain title and ownership over the mortgaged property. Both actions asked the courts (Branch 141 and Branch 143) to stop and/or invalidate the foreclosure proceeding and its subsequent proceedings. Both were based on the same theory of the case — Banco Filipino cannot be forced to perform its principal loan obligation to BSP because of the prohibition to pay while it is under PDIC receivership. Consequently, the accessory mortgage obligation cannot be enforced as well. Given the prohibition to pay, Banco Filipino cannot be put in default, which is a requirement before the creditor-mortgagee, BSP can foreclose the mortgage. Without being in default, the right to foreclose does not arise.

The Court observed that this theory of the case was found in the initiatory pleadings of both the declaratory relief case and the annulment case, and were lengthily discussed using the exactly same words.⁴⁶ This is a crystal clear indication that both actions were cut from the same stone, but were presented differently.

The Court finds that, although the terminologies of the two actions are dissimilar, they were rooted on the same theory of the case, protected the same right of BF Citiland, and pursued the same result. Thus, there is identity of right or cause of action and relief sought.

Lastly, would a resolution in either of the actions result to *litis pendentia* or *res judicata*?

In *Goodland Co., Inc. v. Banco De Oro-Unibank, Inc.*,⁴⁷ the Court defined and enumerated the elements of *litis pendentia* and *res judicata*:

Litis pendentia is a ground for the dismissal of an action when there is another action pending between the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious. It exists when the following requisites concur:

1. Identity of parties or of representation in both cases[;]
2. Identity of rights asserted and relief prayed for[;]
3. The relief must be founded on the same facts and the same basis[;]
and
4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration.

⁴⁶ *Rollo*, pp. 47-49, 63-65.

⁴⁷ G.R. No. 208543, February 11, 2019.

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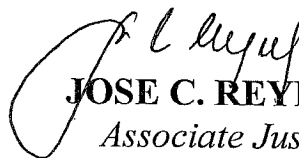
Res judicata, on the other hand, exists if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.

The first three elements of *litis pendentia* are the same as forum shopping, and it was discussed in the preceding paragraphs as present in this case. The only question left for the Court to decide is whether a resolution in either the declaratory relief case or in the annulment case would result to either *litis pendentia* or *res judicata* on the remaining case.

The Court resolves in the affirmative. It was established that the two actions have identity of parties, identity of right or cause of action, and identity of reliefs sought. A decision on the merits in one action is, in theory, also a decision on the other remaining action. However, since the two actions were filed in two different courts/*fora*, the complainant/petitioner is considered to be shopping for a favorable result; hence, the term forum shopping. Having determined the presence of all the elements of forum shopping, we deny the petition.

WHEREFORE, premises considered, the petition is **DENIED**. The October 9, 2015 Decision and the May 26, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138747 are **AFFIRMED**.

SO ORDERED.

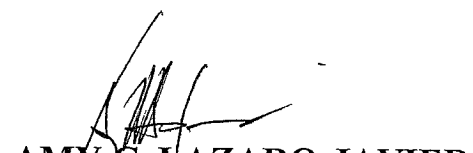

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



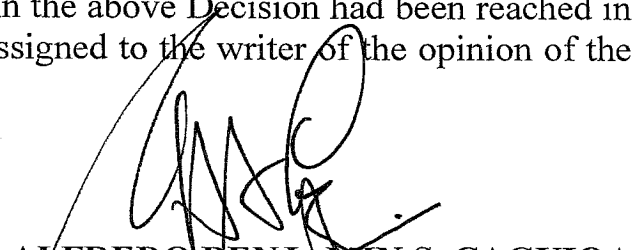
AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

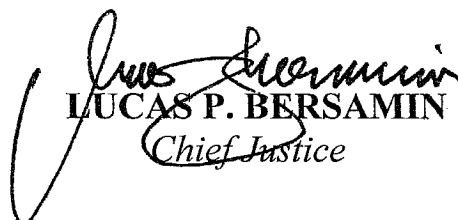
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMÍN S. CAGUIOA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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