



Republic of the Philippines  
Supreme Court  
Daguio City

EN BANC

DYNAMIC BUILDERS &  
CONSTRUCTION CO. (PHIL.),  
INC.,

Petitioner,

G.R. No. 174202

Present:

- versus -

HON. RICARDO P.  
PRESBITERO, JR., MAYOR AND  
HEAD OF PROCURING UNIT OF  
THE MUNICIPALITY OF  
VALLADOLID, NEGROS  
OCCIDENTAL; BIDS AND  
AWARDS COMMITTEE,  
MUNICIPALITY OF  
VALLADOLID, NEGROS  
OCCIDENTAL; AND HENRY L.  
JORDAN AND/OR HLJ  
CONSTRUCTION AND  
ENTERPRISE,

Respondents.

SERENO, C.J.  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,  
LEONEN, and  
JARDELEZA, JJ.

Promulgated:

April 7, 2015

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DECISION

LEONEN, J.:

- On Official Leave.
- On Leave.

Republic Act No. 8975 does not sanction splitting a cause of action in order for a party to avail itself of the ancillary remedy of a temporary restraining order from this court. Also, this law covers only national government infrastructure projects. This case involves a local government infrastructure project.

For local government infrastructure projects, Regional Trial Courts may issue provisional injunctive reliefs against government infrastructure projects only when (1) there are compelling and substantial constitutional violations; (2) there clearly exists a right *in esse*; (3) there is a need to prevent grave and irreparable injuries; (4) there is a demonstrable urgency to the issuance of the injunctive relief; and (5) when there are public interest at stake in restraining or enjoining the project while the action is pending that far outweighs (a) the inconvenience or costs to the party to whom the project is awarded and (b) the public benefits that will result from the completion of the project. The time periods for the validity of temporary restraining orders issued by trial courts should be strictly followed. No preliminary injunction should issue unless the evidence to support the injunctive relief is clear and convincing.

We are asked by Dynamic Builders & Construction Co. (Phil.), Inc. (Dynamic Builders) through this Petition for prohibition with application for issuance of a temporary restraining order and/or writ of preliminary injunction<sup>1</sup> that:

1. Upon the filing of this petition, a temporary restraining order and/or writ of preliminary injunction be immediately issued restraining and enjoining:

- (a) the enforcement or execution of the 12 June 2006 Decision and the 30 June 2006 Resolution by the Hon. Ricardo P. Presbitero, Jr., Mayor of the Municipality of Valladolid and Head of the Procuring Entity in Protest Case No. BPC-01-06 entitled “Dynamic Builders & Construction Company (Phil.), Inc. v. Bids And Awards Committee, Municipality of Valladolid, Negros Occidental” by the respondents, or their agents, or anyone acting in their behalf, or anyone who stands to benefit from such order, in any manner, during the pendency of the proceedings in Civil Case No. 1459 in order not to render further proceedings in Civil Case No. 1459 moot and academic and any judgment in the said case ineffectual;
- (b) the implementation of the award of the Construction Shoreline Protection Project subject of Protest Case No. BPC-01-06, during the pendency of Civil Case No. 1459, by the respondents, or their agents, or anyone

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<sup>1</sup> *Rollo*, pp. 3–40.

acting in their behalf, or anyone who stands to benefit from such implementation, in any manner, during the pendency of the proceedings in Civil Case No. 1459 in order not to render further proceedings in Civil Case No. 1459 moot and any judgment in the said case ineffectual; and

2. Thereafter, a writ of prohibition be issued and/or the preliminary injunction be made permanent and continuing, during the pendency of Civil Case No. 1459 before the Regional Trial Court of Bago City.

Other reliefs just and equitable in the premises are likewise prayed for.<sup>2</sup>

On December 28, 2005, the Municipality of Valladolid, Negros Occidental, through its Bids and Awards Committee, published an invitation to bid for the construction of a 1,050-lineal-meter rubble concrete seawall along the municipality's shoreline.<sup>3</sup> This infrastructure venture is known as the "Construction Shoreline Protection Project."<sup>4</sup>

On January 17, 2006, the Bids and Awards Committee conducted a pre-bid conference attended by six (6) prospective contractors including Dynamic Builders.<sup>5</sup>

On January 31, 2006, three (3) out of the seven (7) contractors that had secured bidding documents in order to bid "submitted letters of withdrawal."<sup>6</sup> Thus, only the remaining four (4) bidders "were considered during the opening of the bids."<sup>7</sup> The prices offered were the following:<sup>8</sup>

Mig-wells Const Corp	□35,561,015.33	Highest Bidder
ADP Const & Supply	□34,778,496.72	3 <sup>rd</sup> Lowest Bidder
Dynamic Builders & Const	□29,750,000.00	Lowest Bidder
HLJ Const & Ent.	□31,922,420.27	2 <sup>nd</sup> Lowest Bidder

On March 27, 2006, the Bids and Awards Committee issued Resolution No. 6 recommending the award in favor of HLJ Construction and Enterprise.<sup>9</sup>

On April 18, 2006, the Municipality of Valladolid received its "NO OBJECTION" letter from World Bank through the LOGOFIND<sup>10</sup> project

<sup>2</sup> Id. at 35–36.

<sup>3</sup> Id. at 9 and 45.

<sup>4</sup> Id. at 3–4.

<sup>5</sup> Id. at 9 and 45.

<sup>6</sup> Id. at 45.

<sup>7</sup> Id. at 46.

<sup>8</sup> Id.

<sup>9</sup> Id. at 10 and 48.

director, advising the Bids and Awards Committee to proceed with the issuance of the notice of award, letter of acceptance, signing of contract, and notice to proceed.<sup>11</sup>

On April 21, 2006, the Bids and Awards Committee issued Resolution No. 7 affirming the award of contract to HLJ Construction and Enterprise for the construction of the 1,050-lineal-meter Construction Shoreline Protection Project amounting to ₱31,922,420.37.<sup>12</sup>

On April 25, 2006, Bids and Awards Committee Chairperson Celina C. Segunla wrote Engr. Raul F. Balandra of Dynamic Builders and the other participating losing bidders, ADP Construction and Mig-Wells Construction Corporation, to inform them of the Bids and Awards Committee's findings and decision.<sup>13</sup> Dynamic Builders was informed that "its bid proposal had been found to be 'not substantially responsive.'"<sup>14</sup> Dynamic Builders received this decision on May 11, 2006.<sup>15</sup>

Dynamic Builders alleged that on May 5, 2006, it submitted the letter dated April 7, 2006 containing a request for the Bids and Awards Committee to furnish it with all submitted bid documents and relevant Bids and Awards Committee resolutions, but this was denied by the letter dated May 5, 2006 invoking confidentiality under Section 2.46 of the LOGOFIND guidelines.<sup>16</sup>

On May 15, 2006, the Bids and Awards Committee received the letter from Dynamic Builders seeking reconsideration of the April 25, 2006 decision declaring Dynamic Builders' bid as not substantially responsive.<sup>17</sup>

On May 22, 2006, the Bids and Awards Committee wrote Dynamic Builders denying the request for reconsideration. It informed Dynamic Builders of the post-evaluation examination results showing Dynamic Builders' failure in its Financial Contracting Capability.<sup>18</sup>

On June 6, 2006, Dynamic Builders lodged a formal protest with the head of the procuring entity, Mayor Ricardo P. Presbitero, Jr. (Mayor Presbitero), to set aside the Bids and Awards Committee decision declaring Dynamic Builders' bid as not substantially responsive.<sup>19</sup>

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<sup>10</sup> LOGOFIND stands for Local Government Finance and Development.

<sup>11</sup> *Rollo*, pp. 10 and 48.

<sup>12</sup> *Id.* at 10 and 49.

<sup>13</sup> *Id.* at 11 and 49.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 12 and 49.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 13 and 49.

Mayor Presbitero dismissed the protest in the Decision<sup>20</sup> dated June 12, 2006.

According to Mayor Presbitero's June 12, 2006 Decision, the bidders underwent preliminary examination and were "subjected to the criteria of Verification, Eligibility, Bid Security, Completeness of Bid, Substantial Responsiveness, and Acceptance for Detailed Examination[.]"<sup>21</sup> Mig-wells Construction Corporation did not pass the preliminary examination, while the remaining three that passed were subjected to detailed examination. All three passed and qualified for post-evaluation examination.<sup>22</sup>

The June 12, 2006 Decision also stated that during the post-evaluation examination, the three bidders submitted their financial statements for the last five (5) years and other documents expressly provided in Volume 2 of the Procurement Guidelines Manual of LOGOFIND World Bank.<sup>23</sup> The examination showed that Dynamic Builders had a negative Financial Contracting Capability of ₱64,579,119.13 due to numerous other contractual commitments or balance of works.<sup>24</sup> HLJ Construction and Enterprise had a positive Financial Contracting Capability of ₱30,921,063.86, while ADP Construction had a positive Financial Contracting Capability of only ₱12,770,893.78.<sup>25</sup> Section 4.5.e of the Instruction To Bidders requires a minimum Financial Contracting Capability of ₱13,000,000.00.<sup>26</sup>

Mayor Presbitero denied Dynamic Builders' Motion for Reconsideration in the Resolution<sup>27</sup> dated June 30, 2006.

On September 4, 2006 and pursuant to Article XVII, Section 58 of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, Dynamic Builders filed the Petition for Certiorari before the Regional Trial Court of Bago City, Negros Occidental, assailing Mayor Presbitero's Decision and Resolution.<sup>28</sup>

Simultaneously, Dynamic Builders filed this Petition<sup>29</sup> dated September 4, 2006 for prohibition with application for temporary restraining order and/or writ of preliminary injunction before this court.<sup>30</sup> This was received by this court on September 6, 2006.<sup>31</sup>

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<sup>20</sup> Id. at 44–64.

<sup>21</sup> Id. at 46.

<sup>22</sup> Id.

<sup>23</sup> Id. at 46–47.

<sup>24</sup> Id. at 47.

<sup>25</sup> Id. at 47–48.

<sup>26</sup> Id. at 48.

<sup>27</sup> Id. at 65–66.

<sup>28</sup> Id. at 14.

<sup>29</sup> Id. at 3–39.

<sup>30</sup> Id. at 14.

<sup>31</sup> Id. at 3.

Petitioner Dynamic Builders submits that Article XVII, Section 58 of Republic Act No. 9184 implicitly allowed it to simultaneously file a Petition for Certiorari before the Regional Trial Court assailing the protest case on the merits, and another Petition before this court for injunctive remedies.<sup>32</sup>

Petitioner argues that in Section 58, the “*law* conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Project of Government” refers to Republic Act No. 8975<sup>33</sup> in relation to Presidential Decree No. 1818.<sup>34</sup> Petitioner then submits that “while R.A. No. 8975 appears to apply only to national government infrastructure projects . . . the resulting amendment to P.D. No. 1818 (by virtue of Sections 3 and 9 of R.A. No. 8975) removing any restriction upon the Honorable Supreme Court to issue injunctive relief, would similarly apply to the infrastructure projects . . . subject of, or covered by, P.D. No. 1818, which would include those infrastructure projects undertaken for or by local governments.”<sup>35</sup>

Petitioner asserts that *J.V. Lagon Construction v. Pangarungan*<sup>36</sup> clarified that Regional Trial Courts can issue injunctive relief when it is of “extreme urgency involving a constitutional issue.”<sup>37</sup> Nevertheless, petitioner argues that this ruling was an *obiter dictum*, and *J.V. Lagon* involved a national government project.<sup>38</sup> Thus, it only exercised prudence when it took twin remedial routes.<sup>39</sup>

The Petition alleges that respondent HLJ Construction and Enterprise already commenced construction and “obtained the release of the 15% advance . . . for mobilization costs as well as partial payments for the portion . . . completed.”<sup>40</sup> Petitioner argues that the issuance of a temporary restraining order and/or preliminary injunction was of extreme urgency, as it was illegally deprived of its constitutional rights to due process and equal protection of law.<sup>41</sup>

The Petition then incorporates by reference its Civil Case No. 1459 Petition’s discussion on the following arguments:

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<sup>32</sup> Id. at 15.

<sup>33</sup> An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes (2000).

<sup>34</sup> Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by, the Government (1981).

<sup>35</sup> *Rollo*, p. 18.

<sup>36</sup> G.R. No. 167840, June 29, 2005 [Unsigned Resolution, Third Division].

<sup>37</sup> *Rollo*, p. 19.

<sup>38</sup> Id. at 20–21.

<sup>39</sup> Id. at 22.

<sup>40</sup> Id. at 32–33.

<sup>41</sup> Id. at 32.

- (1) Petitioner was denied due process when the contract was awarded to private respondent HLJ Construction and Enterprise without first giving the former an opportunity to avail itself of the remedies under R.A. No. 9184[;]
- (2) The award of the contract to private respondent HLJ Construction and Enterprise violated Section 57 of R.A. No. 9184[;]
- (3) Contrary to the findings of public respondents, the bid submitted by petitioner was responsive[;] [and]
- (4) For having in fact submitted the Lowest Calculated Responsive Bid, petitioner should be awarded the contract for the Construction of 1,050 Lineal Meter Rubble Concrete Seawall of the Municipality of Valladolid, Negros Occidental.<sup>42</sup>

By Resolution dated September 18, 2006, this court ordered the parties to “***MAINTAIN THE STATUS QUO*** as of September 18, 2006 effective immediately until further orders from the Court.”<sup>43</sup>

In their Comment<sup>44</sup> on the Petition, public respondents counter that petitioner “grossly violated the rules against splitting a single cause of action, multiplicity of suits, and forum shopping . . . [and] availed of an improper remedy and disregarded the rule on ‘hierarchy of courts[.]’”<sup>45</sup> The project undertaken by HLJ Construction and Enterprise was almost near completion, and prohibition “[was] not intended to provide a remedy for acts already executed or accomplished.”<sup>46</sup> Petitioner should have asked for injunctive relief in Civil Case No. 1459 filed before the trial court.<sup>47</sup>

Public respondents argue that Article XVII, Section 58 of Republic Act No. 9184, Presidential Decree No. 1818, and Republic Act No. 8975 do not envision simultaneous resort to remedies before the trial court and this court.<sup>48</sup> They submit that Section 58 provides for *alternative* remedies between an action under Rule 65 before the Regional Trial Court and a proper action directly before this court.<sup>49</sup>

Public respondents agree that Republic Act No. 8975 only governs national government projects but disagree insofar as petitioner’s submission that since Republic Act No. 8975 amended Presidential Decree No. 1818 by

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<sup>42</sup> Id. at 24.

<sup>43</sup> Id. at 156 and 240.

<sup>44</sup> Id. at 193–208.

<sup>45</sup> Id. at 194.

<sup>46</sup> Id. at 199.

<sup>47</sup> Id. at 203.

<sup>48</sup> Id. at 199.

<sup>49</sup> Id. at 201.

removing the restriction on this court to issue injunctive relief, it now covers local government projects.<sup>50</sup>

Respondent HLJ Construction and Enterprise similarly raises the issue of petitioner's forum shopping.<sup>51</sup> It adds that due process was not denied, as public respondent notified petitioner of its findings and decision, heard petitioner's arguments, and entertained petitioner's motion for reconsideration.<sup>52</sup> Respondent HLJ Construction and Enterprise stresses that the Construction Shoreline Protection Project's delay will only result in grave injustice and irreparable injury affecting the people of the Municipality of Valladolid, Negros Occidental.<sup>53</sup>

On December 13, 2006, petitioner filed a verified Petition to Cite Respondents for Contempt,<sup>54</sup> alleging that respondents did not cease work on the project in disregard of this court's status quo order.<sup>55</sup> Respondents filed their respective comments.<sup>56</sup>

The issues for our resolution are as follows:

First, whether Article XVII, Section 58 of Republic Act No. 9184 contemplates simultaneous filing of a petition for prohibition seeking injunctive reliefs from this court and a petition for certiorari before the Regional Trial Court; consequently:

- a) Whether petitioner violated the rules against the splitting of a cause of action, multiplicity of suits, and forum shopping;
- b) Whether petitioner violated the doctrine on hierarchy of courts; and
- c) Whether petitioner resorted to an improper remedy when it filed a petition for prohibition with this court.

Second, whether Article XVII, Section 58 of Republic Act No. 9184, in relation to Republic Act No. 8975 and Presidential Decree No. 1818, allows Regional Trial Courts to issue injunctive relief subject to the presence of certain conditions; and

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<sup>50</sup> Id. at 202.

<sup>51</sup> Id. at 180.

<sup>52</sup> Id. at 183.

<sup>53</sup> Id. at 187.

<sup>54</sup> Id. at 240–246.

<sup>55</sup> Id. at 241.

<sup>56</sup> Id. at 287–291 and 299–306.



Lastly, whether respondents violated this court's September 18, 2006 status quo Order in relation to the ongoing Construction Shoreline Protection Project.

## I

We proceed with the procedural issue of whether petitioner availed itself of the wrong remedy in simultaneously filing (1) a petition for certiorari before the trial court alleging that public respondent gravely abused its discretion in rendering its June 12, 2006 Decision and June 30, 2006 Resolution and (2) a petition for prohibition seeking injunctive reliefs from this court to enjoin the enforcement of public respondent's June 12, 2006 Decision and June 30, 2006 Resolution during the pendency of the case before the trial court.

Public respondents submit that a simple reading of the Petition in Civil Case No. 1459 readily reveals that petitioner also asked the trial court to nullify the same Decision and Resolution on the identical ground of grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>57</sup>

Petitioner counters that it was compelled to file the separate petitions pursuant to, and in view of, Article XVII, Section 58 of Republic Act No. 9184.<sup>58</sup>

*Sec. 58. Report to Regular Courts; Certiorari. – Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. **The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.***

*This provision is **without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.** (Emphasis supplied)*

Section 58 could not have envisioned a simultaneous resort to this court by one that had already filed an action before the Regional Trial Court without violating the basic rules on proscription against the splitting of a cause of action, multiplicity of suits, and forum shopping.

Rule 2, Section 3 of the Rules of Court provides that “[a] party may

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<sup>57</sup> Id. at 195.

<sup>58</sup> Id. at 15.

not institute more than one suit for a single cause of action.” Moreover, Section 4 discusses the splitting of a single cause of action in that “if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.” The splitting of a cause of action “violate[s] the policy against multiplicity of suits, whose primary objective [is] to avoid unduly burdening the dockets of the courts.”<sup>59</sup>

This Petition seeks to enjoin the execution of public respondent’s Decision and Resolution on the protest — the same Decision and Resolution sought to be set aside in the Petition before the Regional Trial Court. In essence, petitioner seeks the same relief through two separate Petitions filed before separate courts. This violates the rule against forum shopping.

Rule 7, Section 5 of the Rules of Court requires the plaintiff or principal party to certify under oath that he or she has not commenced any action involving the same issues in any court. This court has discussed this rule against forum shopping:

In essence, forum shopping is the practice of litigants resorting to two different fora for the purpose of obtaining the same relief, to increase their chances of obtaining a favorable judgment. In determining whether forum shopping exists, it is important to consider the vexation caused to the courts and the parties-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or fora on the same issues. We have ruled that forum shopping is present when, in two or more cases pending, there is identity of (1) parties (2) rights or causes of action and reliefs prayed for and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration.<sup>60</sup>

Private respondent alleges that petitioner did not even notify the Regional Trial Court of Bago City, Negros Occidental, of its Petition filed before this court.<sup>61</sup>

The second paragraph of Article XVII, Section 58 of Republic Act No. 9184 simply means it does not preclude a direct filing before this court in proper cases.

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<sup>59</sup> *Chu v. Spouses Cunanan*, G.R. No. 156185, September 12, 2011, 657 SCRA 379, 390 [Per J. Bersamin, First Division].

<sup>60</sup> *Air Material Wing Savings and Loan Association, Inc. v. Manay*, 575 Phil. 591, 604 (2008) [Per J. Ynares-Santiago, Third Division], citing *La Campana Development Corp. v. See*, 525 Phil. 652, 656 (2006) [Per J. Corona, Second Division].

<sup>61</sup> *Rollo*, p. 181.

The Rules of Court provides for original concurrent jurisdiction by the Regional Trial Court, the Court of Appeals, and this court in entertaining petitions for certiorari, prohibition, or mandamus.<sup>62</sup> However, parties must adhere to the principle of hierarchy of courts. This was discussed in *Dimson (Manila), Inc., et al. v. Local Water Utilities Administration*.<sup>63</sup>

Clearly, the proper recourse to a court action from decisions of the BAC, such as this one, is to file a *certiorari* not before the Supreme Court but before the regional trial court which is vested by R.A. No. 9184 with jurisdiction to entertain the same. In the recent case of *First United Constructors Corporation v. Poro Point Management Corporation*, we held that while indeed the *certiorari* jurisdiction of the regional trial court is concurrent with this Court's, that fact alone does not allow an unrestricted freedom of choice of the court forum. But since this is not an iron-clad rule and the full discretionary power to take cognizance of and assume jurisdiction over special civil actions for *certiorari* directly filed with the Court may actually be exercised by it, it is nevertheless imperative that the Court's intervention be called for by exceptionally compelling reasons or be warranted by the nature of the issues involved. In other words, a direct invocation of the Supreme Court's original jurisdiction to issue the writ will be allowed only when there are special and important reasons clearly and specifically set out in the petition.<sup>64</sup> (Citations omitted)

The hierarchy of courts must be respected. The doctrine with respect to hierarchy of courts was designed so that this court will have more time to focus on its constitutional tasks without the need to deal with causes that also fall within the lower courts' competence.<sup>65</sup> This court acts on petitions for extraordinary writs under Rule 65 "only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy."<sup>66</sup>

Consistent with these rules and doctrines, the remedy contemplated by Article XVII, Section 58 of Republic Act No. 9184 is either an action under Rule 65 before the Regional Trial Court or the proper action filed before this court. However, direct resort to this court can prosper only when the requisites for direct invocation of this court's original jurisdiction are present.

## II

Prohibition is a preventive remedy. This court has held that injunctive

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<sup>62</sup> RULES OF COURT, Rule 65, sec. 4.

<sup>63</sup> 645 Phil. 309 (2010) [Per J. Peralta, Second Division].

<sup>64</sup> Id. at 319.

<sup>65</sup> *Bañez, Jr. v. Concepcion*, G.R. No. 159508, August 29, 2012, 679 SCRA 237, 250 [Per J. Bersamin, First Division].

<sup>66</sup> Id. See also *Hon. Fortich v. Hon. Corona*, 352 Phil. 461, 480 (1998) [Per J. Martinez, Second Division].

remedies will not lie for acts already accomplished.<sup>67</sup>

The acts sought to be enjoined in this case included the implementation of the Construction Shoreline Protection Project awarded to private respondent HLJ Construction and Enterprise. The project had already commenced and had been ongoing at the time petitioner filed this case.

Moreover, the issue of whether these acts infringed on petitioner's rights is a matter interrelated with the issues raised in the Petition before the trial court, emphasizing the existence of the splitting of a cause of action.

In any case, this court has stressed that extraordinary writs of certiorari, prohibition, and mandamus are "prerogative writs of equity[.]"<sup>68</sup> It is within the court's sound discretion whether these writs should be granted, and it will need to ensure that there is a clear right to the relief.<sup>69</sup>

Prohibition is defined as "an extraordinary remedy available to compel any tribunal, corporation, board, or person exercising judicial or ministerial functions, to desist from further [proceeding] in an action or matter when the proceedings in such tribunal, corporation, board or person are without or in excess of jurisdiction or with grave abuse of discretion[.]"<sup>70</sup>

Grave abuse of discretion will prosper as a ground for prohibition when it is shown that "there was . . . capricious and whimsical exercise of judgment . . . equivalent to lack of jurisdiction or that the tribunal, corporation, board or person has exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility."<sup>71</sup>

First, public respondent had jurisdiction to rule on the protest since it was then head of the procuring entity.<sup>72</sup>

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<sup>67</sup> See *Overseas Workers Welfare Administration v. Chavez*, 551 Phil. 890, 915 (2007) [Per J. Chico-Nazario, Third Division], citing *Laxina, Sr. v. Office of the Ombudsman*, 508 Phil. 527, 541 (2005) [Per J. Tinga, Second Division]. See also *Heirs of Roxas, Inc. v. Intermediate Appellate Court*, 255 Phil. 558, 575 (1989) [Per J. Cortes, Third Division], citing *Cabañero v. Torres*, 61 Phil. 522, 524–525 (1935) [Per J. Abad Santos, En Banc]; *Agustin, et al. v. De la Fuente*, 84 Phil. 515, 517 (1949) [Per J. A. Reyes, En Banc]; *Navarro v. Lardizabal*, 134 Phil. 331, 337 (1968) [Per J. Angeles, En Banc].

<sup>68</sup> *Spouses Caviles v. Court of Appeals*, 438 Phil. 13, 25 (2002) [Per J. Austria-Martinez, Second Division], citing *Pimentel v. Angeles*, 150-A Phil. 743, 749 (1972) [Per J. Teehankee, En Banc] and J. Concepcion, Concurring and Dissenting Opinion in *Aytona v. Castillo*, G.R. No. L-19313, January 19, 1962, 4 SCRA 1, 17–18 [Per C.J. Bengzon, En Banc].

<sup>69</sup> Id.

<sup>70</sup> *Delfin v. Court of Appeals*, 121 Phil. 346, 348–349 (1965) [Per J. J.P. Bengzon, En Banc]. RULES OF COURT, Rule 65, sec. 2.

<sup>71</sup> *Spouses Caviles v. Court of Appeals*, 438 Phil. 13, 24 (2002) [Per J. Austria-Martinez, Second Division], citing *Solidum v. Hernandez*, 117 Phil. 335, 340 (1963) [Per J. Regala, En Banc] and *Delfin v. Court of Appeals*, 121 Phil. 346, 349 (1965) [Per J. J.P. Bengzon, En Banc].

<sup>72</sup> Rep. Act No. 9184 (2003), art. XVII, sec. 55.

Second, this court need not look into petitioner's allegation that its Petition before the Regional Trial Court raised grounds warranting the reversal of public respondent's Decision.<sup>73</sup> The merits of whether there was grave abuse of discretion by public respondent were already subject of the Petition before the trial court. Petitioner cannot be allowed to seek the same relief from this court.

Rule 65 likewise requires that there be "no appeal or any . . . plain, speedy, [or] adequate remedy in the ordinary course of law."<sup>74</sup> Section 3 of Republic Act No. 8975 provides for such a remedy when it gave an exception to the general rule prohibiting lower courts from issuing provisional injunctive relief against national government projects:

Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

....

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. *This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.* The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought. (Emphasis supplied)

When the matter is of "extreme urgency involving a constitutional issue," even Regional Trial Courts may grant injunctive reliefs as explained in *Republic v. Nolasco*:<sup>75</sup>

Republic Act No. 8975 definitively enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to restrain, prohibit or compel the bidding or awarding of a contract or project of the national government, precisely the situation that obtains in this case with respect to the Agno River Project. *The only exception would be if the*

<sup>73</sup> *Rollo*, p. 22.

<sup>74</sup> RULES OF COURT, Rule 65, sec. 2.

<sup>75</sup> 496 Phil. 853 (2005) [Per J. Tinga, Second Division].

*matter is of extreme urgency involving a constitutional issue, such that unless the temporary restraining order is issued, grave injustice and irreparable injury will arise.*<sup>76</sup> (Emphasis supplied, citations omitted)

Considering that petitioner alleges that this matter is “of extreme urgency, involving as it does the . . . constitutional right[s] to due process and equal protection of the law,”<sup>77</sup> it should have prayed for injunctive relief before the trial court where its Petition for Certiorari via Rule 65 was pending, together with a bond fixed by the court.

Mere allegation or invocation that constitutionally protected rights were violated will not automatically result in the issuance of injunctive relief. The plaintiff or the petitioner should discharge the burden to show a clear and compelling breach of a constitutional provision. Violations of constitutional provisions are easily alleged, but trial courts should scrutinize diligently and deliberately the evidence showing the existence of facts that should support the conclusion that a constitutional provision is clearly and convincingly breached. In case of doubt, no injunctive relief should issue. In the proper cases, the aggrieved party may then avail itself of special civil actions and elevate the matter.

This court adheres to the policy behind the prohibition under Republic Act No. 8975 and even issued Administrative Circular No. 11-2000 entitled *Re: Ban on the Issuance of Temporary Restraining Orders or Writs of Preliminary Prohibitory or Mandatory Injunctions in Cases Involving Government Infrastructure Projects*. This circular enjoins lower court judges to strictly comply with Republic Act No. 8975.

However, the issue here does not involve the propriety of a lower court’s issuance or non-issuance of provisional injunctive relief, but petitioner’s insistence that only this court can issue such injunctive relief in justifying its simultaneous Petitions before the Regional Trial Court and this court.

Petitioner hinges its erroneous simultaneous Petitions on its reading of Republic Act No. 8975 in relation to Presidential Decree No. 1818.

### III

Petitioner submits that only this court has the power to issue injunctions to enjoin government infrastructures including those of local government.<sup>78</sup>

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<sup>76</sup> Id. at 868.

<sup>77</sup> *Rollo*, p. 32.

<sup>78</sup> Id. at 18.

Petitioner explains that the “laws” referred to in Article XVII, Section 58 of Republic Act No. 9184 refer to Republic Act No. 8975 that prohibits courts, *except the Supreme Court*, from issuing temporary restraining orders and injunctions against government infrastructure projects. It adds that Republic Act No. 8975 must be taken in relation to Presidential Decree No. 1818 prohibiting the issuances by the courts of restraining orders or injunctions involving infrastructure projects.<sup>79</sup> The full text of Presidential Decree No. 1818 promulgated in 1981 reads:

PRESIDENTIAL DECREE NO. 1818

PROHIBITING COURTS FROM ISSUING RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS IN CASES INVOLVING INFRASTRUCTURE AND NATURAL RESOURCE DEVELOPMENT PROJECTS OF, AND PUBLIC UTILITIES OPERATED BY, THE GOVERNMENT.

WHEREAS, Presidential Decree No. 605 prohibits the issuance by the courts of restraining orders or injunctions in cases involving concessions, licenses, and other permits issued by administrative officials or bodies for the exploitation, development and utilization of natural resources of the country;

WHEREAS, it is in the public interest to adopt a similar prohibition against the issuance of such restraining orders or injunctions in other areas of activity equally critical to the economic development effort of the nation, in order not to disrupt or hamper the pursuit of essential government projects;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as follows:

Section 1. *No court* in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving *an infrastructure project*, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

Section 2. This decree shall take effect immediately. (Emphasis supplied)

In 2000, Republic Act No. 8975 was passed. Section 3 of the law provides:

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<sup>79</sup> Id. at 16.

Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. - *No court, except the Supreme Court*, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any *national* government project;
- (b) Bidding or awarding of contract/project of the *national* government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws. (Emphasis supplied)

Petitioner submits that since the repealing clause of Republic Act No. 8975 has "amended accordingly" Presidential Decree No. 1818, the prohibition no longer extends to this court.<sup>80</sup> Section 9 reads:

Sec. 9. Repealing Clause. – All laws, decrees, including Presidential Decree Nos. 605, 1818 and Republic Act No. 7160, as

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<sup>80</sup> Id. at 18.



amended, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.<sup>81</sup>

Petitioner argues that even if Republic Act No. 8975 only mentions *national* government infrastructure projects, Section 9 has accordingly amended Presidential Decree No. 1818, such that the projects covered by this earlier law, like those undertaken by local governments, are similarly covered by the removal of the prohibition against this court.<sup>82</sup>

In other words, petitioner contends that based on these laws, only this court can issue injunctive relief against local government infrastructure projects. Thus, it was constrained to simultaneously file two separate Petitions before the Regional Trial Court and this court.

We cannot agree.

There is nothing in Republic Act No. 8975 or in Presidential Decree No. 1818 that allows the simultaneous availment of legal remedies before the Regional Trial Court and this court.

Republic Act No. 8975, even when read with Presidential Decree No. 1818, does not sanction the splitting of a cause of action in order for a party to avail itself of the ancillary remedy of a temporary restraining order from this court.

Petitioner's reading of Republic Act No. 8975's repealing clause, such that only this court can issue injunctive relief, fails to persuade.

This court has set the limit on the prohibition found in Presidential Decree No. 1818 by explaining that lower courts are not prohibited from enjoining administrative acts when questions of law exist and the acts do not involve administrative discretion in technical cases:

Although Presidential Decree No. 1818 prohibits any court from issuing injunctions in cases involving infrastructure projects, *the prohibition extends only to the issuance of injunctions or restraining orders against administrative acts in controversies involving facts or the exercise of discretion in technical cases.* On issues clearly outside this dimension and involving questions of law, this Court declared that courts could not be prevented from exercising their power to restrain or prohibit administrative acts. In such cases, let the hammer fall and let it fall hard.<sup>83</sup>

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<sup>81</sup> Rep. Act No. 8975 (2000), sec. 9.

<sup>82</sup> *Rollo*, p. 18.

<sup>83</sup> *Hernandez v. NAPOCOR*, 520 Phil. 38, 43 (2006) [Per J. Chico-Nazario, First Division].

The same ruling was made regarding the prohibition in Presidential Decree No. 605 entitled *Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses, and*

(Emphasis supplied, citations omitted)

We also consider the second paragraph of Republic Act No. 8975, Section 3 on the exception to the prohibition:

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. *This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.* The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought. (Emphasis supplied)

In other words, the Regional Trial Court can issue injunctive relief against government infrastructure projects, even those undertaken by local governments, considering that the prohibition in Section 3 of Republic Act No. 8957 only mentions *national* government projects. These courts can issue injunctive relief when there are compelling constitutional violations — only when the right is clear, there is a need to prevent grave and irreparable injuries, and the public interest at stake in restraining or enjoining the project while the action is pending far outweighs the inconvenience or costs to the party to whom the project is awarded.

Republic Act No. 8975 mentions the constitutional provision in that “[t]he use of property bears a social function, and all economic agents shall contribute to the common good.”<sup>84</sup>

Statute cannot be interpreted as to violate protected rights. Thus, the above conditions safeguard against lower court issuances of provisional injunctive relief in cases not falling within the exception.

These safeguards are also consistent with the law’s policy for the expeditious implementation of government projects that ultimately benefit the public:

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*Other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources.* See *Hon. Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 380 (2006) [Per J. Chico-Nazario, First Division], quoting *Datiles and Company v. Sucaldito*, 264 Phil. 1094, 1102 (1990) [Per J. Padilla, Second Division] where this court held that the prohibition in Presidential Decree No. 605 “pertains to the issuance of injunctions or restraining orders by courts against administrative acts in controversies involving facts or the exercise of discretion in technical cases, because to allow courts to judge these matters could disturb the smooth functioning of the administrative machinery[,] [b]ut on issues definitely outside of this dimension and involving questions of law, courts are not prevented by Presidential Decree No. 605 from exercising their power to restrain or prohibit administrative acts.”

<sup>84</sup> CONST., art. XII, sec. 6.

Section 1. Declaration of Policy. - Article XII, Section 6 of the Constitution states that the use of property bears a social function, and all economic agents shall contribute to the common good. Towards this end, the State shall *ensure the expeditious and efficient implementation and completion of government infrastructure projects* to avoid unnecessary increase in construction, maintenance and/or repair costs and to immediately enjoy the social and economic benefits therefrom.<sup>85</sup> (Emphasis supplied)

There is no need for this court to labor on petitioner's arguments regarding violations of due process and equal protection of the law and the alleged grave injustice and irreparable injury petitioner suffered. The Petition's incorporation of its discussion on these arguments, as made in its Petition before the Regional Trial Court docketed as Civil Case No. 1459, only emphasizes the splitting of a cause of action committed.

In any event, the general rule of prohibition under Republic Act No. 8975 does not preclude lower courts from assuming jurisdiction when the ultimate relief prayed for is to nullify a national government infrastructure project and its implementation:

However, it must be clarified that Republic Act No. 8975 does not ordinarily warrant the outright dismissal of any complaint or petition before the lower courts seeking permanent injunctive relief from the implementation of national government infrastructure projects. What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. *It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project.* A statute such as Republic Act No. 8975 cannot diminish the constitutionally mandated judicial power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Section 3 of the law in fact mandates, thus:

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Thus, when a court is called upon to rule on an initiatory pleading assailing any material aspect pertinent to a national government infrastructure project, the court ordinarily may not dismiss the action based solely on Republic Act No. 8975 but is merely enjoined from granting provisional reliefs. If no other ground obtains to dismiss the

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<sup>85</sup> Rep. Act No. 8975 (2000), sec. 1.

action, the court should decide the case on the merits.<sup>86</sup> (Emphasis supplied, citation omitted)

#### IV

We decide on petitioner's verified Petition to Cite Respondent for Contempt alleging violation of this court's September 18, 2006 status quo Order.

In its Comment, private respondent HLJ Construction and Enterprise explains that it has no intention to disobey the Resolution. Its decision to continue the Construction Shoreline Protection Project was based on the definition of "status quo," meaning the "present, current, existing state of affairs."<sup>87</sup>

"The present[,] existing condition on September 18, 2006, was the ongoing construction."<sup>88</sup> Moreover, petitioner's rights were not violated as its bid was declared as "not substantially responsive."<sup>89</sup> In the absence of a clear legal right, no injunction can be granted.<sup>90</sup>

Similarly, public respondent contends in its Comment that the Construction Shoreline Protection Project commenced as early as May 8, 2006.<sup>91</sup> At the time the Petition was filed in September 2006, the Construction Shoreline Protection Project had been ongoing for four (4) months.<sup>92</sup> Thus, the status quo as of the September 18, 2006 Resolution was that the project was ongoing.<sup>93</sup>

This court has explained that status quo should be the one existing at the time of the filing of the case:

*The status quo should be that existing at the time of the filing of the case. The status quo usually preserved by a preliminary injunction is the last actual, peaceable and uncontested status which preceded the actual controversy. The status quo ante litem is, ineluctably, the state of affairs which is existing at the time of the filing of the case. Indubitably, the trial court must not make use of its injunctive power to alter such status.*<sup>94</sup> (Emphasis supplied, citations omitted)

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<sup>86</sup> *Republic v. Nolasco*, 496 Phil. 853, 869–870 (2005) [Per J. Tinga, Second Division].

<sup>87</sup> *Rollo*, p. 288.

<sup>88</sup> *Id.* at 289.

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

<sup>90</sup> *Id.* at 290.

<sup>91</sup> *Id.* at 301.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 301–302.

<sup>94</sup> *Overseas Workers Welfare Administration v. Chavez*, 551 Phil. 890, 911–912 (2007) [Per J. Chico-Nazario, Third Division]. See also *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 945 (2002)

The ordinary meaning of status quo is “the existing state of affairs[,]”<sup>95</sup> while status quo ante refers to “the state of affairs that existed previously.”<sup>96</sup>

Relying in good faith on the ordinary meaning of status quo as differentiated from status quo ante, respondents pushed through with the construction, which had been the existing state of affairs at the time the September 18, 2006 Resolution was issued.

This is consistent with Republic Act No. 8975’s policy that “the State shall ensure the expeditious and efficient implementation and completion of government infrastructure projects to avoid unnecessary increase in construction, maintenance and/or repair costs and to immediately enjoy the social and economic benefits therefrom.”<sup>97</sup> This policy declaration does not distinguish between national and local government infrastructure projects. Delay in the project will only mean additional costs for the government and prejudice to the people of the Municipality of Valladolid who will directly benefit from the Construction Shoreline Protection Project.

**WHEREFORE**, considering the foregoing, the Petition is **DISMISSED** for lack of merit. The verified Petition to Cite Respondents for Contempt dated December 11, 2006 is likewise **DISMISSED** for lack of merit.

**SO ORDERED.**



MARVIC M.V.F. LEONEN

Associate Justice

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[Per J. Panganiban, Third Division], citing *Unciano Paramedical College, Inc. v. Court of Appeals*, G.R. No. 100335, April 7, 1993, 221 SCRA 285, 294 [Per J. Nocon, Second Division]; *Searth Commodities Corp. v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 630 [Per J. Gutierrez, Third Division], citing *Rivas v. Securities and Exchange Commission*, G.R. No. 53772, October 4, 1990, 190 SCRA 295, 305 [Per J. Padilla, Second Division].

<sup>95</sup> Merriam-Webster Dictionary <<http://www.merriam-webster.com/dictionary/status%20quo>> (visited March 23, 2015).


<sup>96</sup> Merriam-Webster Dictionary <<http://www.merriam-webster.com/dictionary/status+quo+ante?show=0&t=1374159844>> (visited March 23, 2015).

<sup>97</sup> Rep. Act No. 8975 (2000), sec. 1.

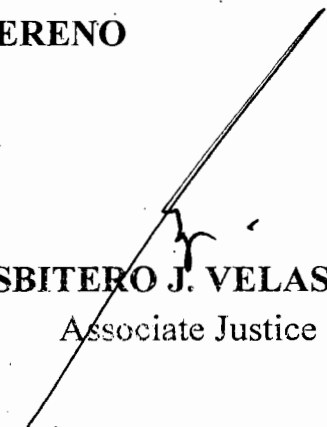
WE CONCUR:



**MARIA LOURDES P. A. SERENO**  
Chief Justice



**ANTONIO T. CARPIO**  
Associate Justice



**PRESBITERO J. VELASCO, JR.**  
Associate Justice



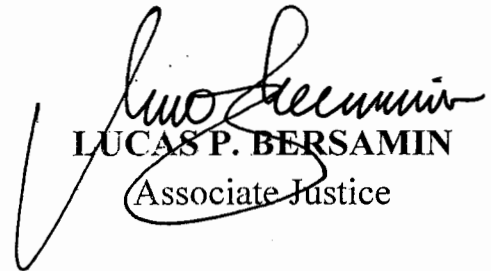
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**ARTURO D. BRION**  
Associate Justice



**DIOSDADO M. PERALTA**  
Associate Justice



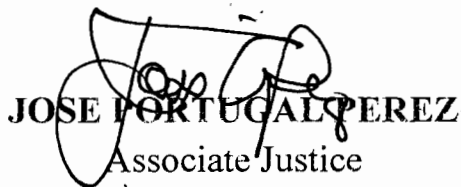
**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice

(on official leave)

**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



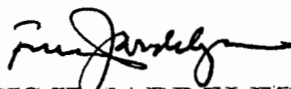
**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

(on leave)

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



**FRANCIS H. JARDELEZA**  
Associate Justice

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.



**MARIA LOURDES P. A. SERENO**

Chief Justice