Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JACK C. VALENCIA,
Petitioner,

- versus -

CLASSIQUE VINYL PRODUCTS CORPORATION, JOHNNY CHANG (Owner) and/or CANTINGAS MANPOWER SERVICES,
Respondents.

G.R. No. 206390

Present:

SERENO, *C. J., Chairperson,*
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, *and*
CAGUIOA, *JJ.*

Promulgated:
JAN 30 2017

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the December 5, 2012 Decision[1] and March 18, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120999, which respectively denied the Petition for *Certiorari* filed therewith by petitioner Jack C. Valencia (Valencia) and the motion for reconsideration thereto.

Factual Antecedents

On March 24, 2010, Valencia filed with the Labor Arbiter a Complaint[3] for Underpayment of Salary and Overtime Pay; Non-Payment of Holiday Pay, Service Incentive Leave Pay, 13[th] Month Pay; Regularization; Moral and Exemplary Damages; and, Attorney's Fees against respondents Classique Vinyl Products Corporation (Classique Vinyl) and its owner Johnny Chang (Chang) and/or respondent Cantingas Manpower Services (CMS). When Valencia, however, asked permission from Chang to attend the hearing in connection with

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1 CA *rollo*, pp. 325-336; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Rosmari D. Carandang and Ricardo R. Rosario.
2 Id. at 389-390.
3 NLRC records, pp. 1-3.

the said complaint on April 17, 2010, the latter allegedly scolded him and told him not to report for work anymore. Hence, Valencia amended his complaint to include illegal dismissal.[4]

In his *Sinumpaang Salaysay,*[5] Valencia alleged that he applied for work with Classique Vinyl but was told by the latter's personnel office to proceed to CMS, a local manpower agency, and therein submit the requirements for employment. Upon submission thereof, CMS made him sign a contract of employment[6] but no copy of the same was given to him. He then proceeded to Classique Vinyl for interview and thereafter started working for the company in June 2005 as felitizer operator. Valencia claimed that he worked 12 hours a day from Monday to Saturday and was receiving ₱187.52 for the first eight hours and an overtime pay of ₱117.20 for the next four hours, or beyond the then minimum wage mandated by law. Five months later, he was made to serve as extruder operator but without the corresponding increase in salary. He was neither paid his holiday pay, service incentive leave pay, and 13th month pay. Worse, premiums for Philhealth and Pag-IBIG Fund were not paid and his monthly deductions for Social Security System (SSS) premiums were not properly remitted. He was also being deducted the amounts of ₱100.00 and ₱60.00 a week for Cash Bond and Agency Fee, respectively. Valencia averred that his salary was paid on a weekly basis but his pay slips neither bore the name of Classique Vinyl nor of CMS; that all the machineries that he was using/operating in connection with his work were all owned by Classique Vinyl; and, that his work was regularly supervised by Classique Vinyl. He further averred that he worked for Classique Vinyl for four years until his dismissal. Hence, by operation of law, he had already attained the status of a regular employee of his true employer, Classique Vinyl, since according to him, CMS is a mere labor-only contractor. Valencia, therefore, argued that Classique Vinyl should be held guilty of illegal dismissal for failing to comply with the twin-notice requirement when it dismissed him from the service and be made to pay for his monetary claims.

Classique Vinyl, for its part, denied having hired Valencia and instead pointed to CMS as the one who actually selected, engaged, and contracted out Valencia's services. It averred that CMS would only deploy Valencia to Classique Vinyl whenever there was an urgent specific task or temporary work and these occasions took place sometime in the years 2005, 2007, 2009 and 2010. It stressed that Valencia's deployment to Classique Vinyl was intermittent and limited to three to four months only in each specific year. Classique Vinyl further contended that Valencia's performance was exclusively and directly supervised by CMS and that his wages and other benefits were also paid by the said agency. It likewise denied dismissing Valencia from work and instead averred that on April 16, 2010, while deployed with Classique Vinyl, Valencia went on a prolonged absence from work for reasons only known to him. In sum, Classique Vinyl

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4 Id. at 7-8.
5 Id. at 27-29.
6 Id. at 139.

asserted that there was no employer-employee relationship between it and Valencia, hence, it could not have illegally dismissed the latter nor can it be held liable for Valencia's monetary claims. Even assuming that Valencia is entitled to monetary benefits, Classique Vinyl averred that it cannot be made to pay the same since it is an establishment regularly employing less than 10 workers. As such, it is exempted from paying the prescribed wage orders in its area and other benefits under the Labor Code. At any rate, Classique Vinyl insisted that Valencia's true employer was CMS, the latter being an independent contractor as shown by the fact that it was duly incorporated and registered not only with the Securities and Exhange Commission but also with the Department of Labor and Employment; and, that it has substantial capital or investment in connection with the work performed and services rendered by its employees to clients.

CMS, on the other hand, denied any employer-employee relationship between it and Valencia. It contended that after it deployed Valencia to Classique Vinyl, it was already the latter which exercised full control and supervision over him. Also, Valencia's wages were paid by Classique Vinyl only that it was CMS which physically handed the same to Valencia.

Ruling of the Labor Arbiter

On September 13, 2010, the Labor Arbiter issued a Decision,[7] the pertinent portions of which read:

> Is [Valencia] a regular employee of respondent [Classique Vinyl]?
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> The Certificate of Business Name Registration issued by the Department of Trade and Industry dated 17 August 2007 and the Renewal of PRPA License No. M-08-03-269 for the period 29 August 2008 to 28 August 2010 issued by the Regional Director of the National Capital Region of the Department of Labor and Employment [on the] 1st day of September 2008 are pieces of evidence to prove that respondent [CMS] is a legitimate Private Recruitment and Placement Agency.
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> Pursuant to its business objective, respondent CMS entered into several Employment Contracts with complainant Valencia as Contractual Employee for deployment to respondent [Classique Vinyl], the last of which was signed by [Valencia] on 06 February 2010.
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> The foregoing Employment Contract for a definite period supports respondent [Classique Vinyl's] assertion that [Valencia] was not hired continuously but intermittently ranging from 3 months to 4 months for the years 2005, 2007, 2009 and 2010. Notably, no controverting evidence was offered to dispute respondent [Classique Vinyl's] assertion.

[7] Id. at 208-215; penned by Labor Arbiter Geobel A. Bartolabac.

Obviously, [Valencia] was deployed by CMS to [Classique Vinyl] for a fixed period.

In Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004, the Supreme Court ruled that it does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.

Thus, even if respondent [Classique Vinyl] exercises full control and supervision over the activities performed by [Valencia], the latter's employment cannot be considered as regular.

Likewise, even if [Valencia] is considered the regular employee of respondent CMS, the complaint for illegal dismissal cannot prosper as [the] employment was not terminated by respondent CMS.

On the other hand, there is no substantial evidence to support [Valencia's] view that he was actually dismissed from his employment by respondent [Classique Vinyl]. After all, it is elementary that he who makes an affirmative allegation has the burden of proof. On this score, [Valencia] failed to establish that he was actually dismissed from his job by respondent [Classique Vinyl], aside from his bare allegation.

With regard to underpayment of salary, respondent CMS admitted that it received from respondent [Classique Vinyl] the salary for [Valencia's] deployment. Respondent CMS never contested that the amount received was sufficient for the payment of [Valencia's] salary.

Furthermore, respondent [Classique Vinyl] cannot be obliged to pay [Valencia's] overtime pay, holiday pay, service incentive leave and 13th month pay as well as the alleged illegal deduction on the following grounds:

a) [Valencia] is not a rank-and-file employee of [Classique Vinyl];

b) No proof was offered to establish that [Valencia] actually rendered overtime services;

c) [Valencia had] not [worked] continuously or even intermittently for [one whole] (1) year[-]period during the specific year of his deployment with respondent [Classique Vinyl] to be entitled to service incentive leave pay.

d) [Valencia] failed to offer substantial evidence to prove that respondent [Classique Vinyl] illegally deducted from his salary the alleged agency and cash bond.

Moreover, as against respondent CMS[,] the record is bereft of factual basis for the exact computation of [Valencia's] money claims as it has remained uncontroverted that [Valencia] was not deployed continuously neither with respondent [Classique Vinyl] and/or to such other clientele.

WHEREFORE, premises considered, judgment is hereby rendered [d]ismissing the above-entitled case for lack of merit and/or factual basis.

SO ORDERED.[8]

Ruling of the National Labor Relations Commission

Valencia promptly appealed to the National Labor Relations Commission (NLRC). Applying the four-fold test, the NLRC, however, declared CMS as Valencia's employer in its Resolution[9] dated April 14, 2011, *viz.*:

> In Order to determine the existence of an employer-employee relationship, the following yardstick had been consistently applied: (1) the selection and engagement; (2) payment of wages; (3) power of dismissal and; (4) the power to control the employee[']s conduct.
>
> In this case, [Valencia] admitted that he applied for work with respondent [CMS] x x x. Upon the acceptance of his application, he was made to sign an employment contract x x x. [Valencia] also admitted that he received his wages from respondent [CMS] x x x. As a matter of fact, respondent [CMS] argued that [Valencia] was given a non-cash wage in the approximate amount of Php3,000.00 x x x.
>
> Notably, it is explicitly stated in the employment contract of [Valencia] that he is required to observe all the rules and regulations of the company as well as [the] lawful instructions of the management during his employment. That failure to do so would cause the termination of his employment contract. The pertinent provision of the contract reads:
>
> > *2. The employee shall observe all the rules and regulations of the company during the period of employment and [the] lawful instructions of the management or its representatives. Failure to do so or if performance is below company standards, management [has] the right to immediately cancel this contract.* x x x
>
> The fact that [Valencia] was subjected to such restriction is an evident exercise of the power of control over [Valencia].
>
> The power of control of respondent [CMS] over Valencia was further bolstered by the declaration of the former that they will not take against [Valencia] his numerous tardiness and absences at work and[;] his non-observance of the company rules. The statement of [CMS] reads:
>
> > *Needless to say that [Valencia] in the course of his employment has incurred many infractions like tardiness and absences, non-observance of company rules, but respondent [CMS], in reiteration will not take this up as leverage against [Valencia].* x x x
>
> Though [Valencia] worked in the premises of Classique Vinyl x x x and that the [equipment] he used in the performance of his work was provided by the latter, the same is not sufficient to establish employer-employee relationship between [Valencia] and Classique Vinyl x x x in view of the foregoing

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8 Id. at 213-215.

9 Id. at 263-273; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Napoleon M. Menese.

> circumstances earlier reflected. Besides, as articulated by jurisprudence, the power of control does not require actual exercise of the power but the power to wield that power x x x.
>
> With the foregoing chain of events, it is evident that [Valencia] is an employee of respondent [CMS].
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> x x x x[10]

Accordingly, the NLRC held that there is no basis for Valencia to hold Classique Vinyl liable for his alleged illegal dismissal as well as for his money claims. Hence, the NLRC dismissed Valencia's appeal and affirmed the decision of the Labor Arbiter.

Valencia's motion for reconsideration thereto was likewise denied for lack of merit in the Resolution[11] dated June 8, 2011.

Ruling of the Court of Appeals

When Valencia sought recourse from the CA, the said court rendered a Decision[12] dated December 5, 2012 denying his Petition for *Certiorari* and affirming the ruling of the NLRC.

Valencia's motion for reconsideration was likewise denied in a Resolution[13] dated March 18, 2013.

Hence, this Petition for Review on *Certiorari* imputing upon the CA the following errors:

> WITH DUE RESPECT, IT IS A SERIOUS ERROR WHICH CONSTITUTE[S] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ON THE PART OF THE HONORABLE COURT OF APPEALS TO HAVE RULED THAT PETITIONER IS AN EMPLOYEE OF CMS AND FURTHER RULED THAT HE IS NOT ENTITLED TO HIS MONETARY CLAIMS.
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> WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS['] DECISION AND RESOLUTION ARE CONTRARY TO LAW AND WELL-SETTLED RULE.[14]

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10 Id. at 270-272.
11 Id. at 317-318.
12 CA *rollo*, pp. 325-336.
13 Id. at 396-397.
14 *Rollo*, p. 8.

Valencia points out that the CA, in ruling that he was an employee of CMS, relied heavily on the employment contract which the latter caused him to sign. He argues, however, that the said contract deserves scant consideration since aside from being improperly filled up (there were many portions without entries), the same was not notarized. Valencia likewise stresses that the burden of proving that CMS is a legitimate job contractor lies with respondents. Here, neither Classique Vinyl nor CMS was able to present proof that the latter has substantial capital to do business as to be considered a legitimate independent contractor. Hence, CMS is presumed to be a mere labor-only contractor and Classique Vinyl, as CMS' principal, was Valencia's true employer. As to his alleged dismissal, Valencia argues that respondents failed to establish just or authorized cause, thus, his dismissal was illegal. Anent his monetary claims, Valencia invokes the principle that he who pleads payment has the burden of proving it. Since respondents failed to present even a single piece of evidence that he has been paid his labor standards benefits, he believes that he is entitled to recover them from respondents who must be held jointly and severally liable for the same. Further, Valencia contends that respondents should be assessed moral and exemplary damages for circumventing pertinent labor laws by preventing him from attaining regular employment status. Lastly, for having been compelled to engage the services of counsel, Valencia claims that he is likewise entitled to attorney's fees.

For their part, respondents Classique Vinyl and Chang point out that the issues raised by Valencia involve questions of fact which are not within the ambit of a petition for review on *certiorari*. Besides, findings of facts of the labor tribunals when affirmed by the CA are generally binding on this Court. At any rate, the said respondents reiterate the arguments they raised before the labor tribunals and the CA.

With respect to respondent CMS, the Court dispensed with the filing of its comment[15] when the resolution requiring it to file one was returned to the Court unserved[16] and after Valencia informed the Court that per Certification[17] of the Office of the Treasurer of Valenzuela City where CMS's office was located, the latter had already closed down its business on March 21, 2012.

Our Ruling

There is no merit in the Petition.

The core issue here is whether there exists an employer-employee relationship between Classique Vinyl and Valencia. Needless to state, it is from the said determination that the other issues raised, *i.e.*, whether Valencia was

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15 Id. at 448-449.
16 Id. at 441-442.
17 Id. at 448-449.

illegally dismissed by Classique Vinyl and whether the latter is liable for his monetary claims, hinge. However, as correctly pointed out by Classique Vinyl, "[t]he issue of whether or not an employer-employee relationship existed between [Valencia] and [Classique Vinyl] is essentially a question of fact."[18] "The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive."[19] While there are recognized exceptions,[20] none of them applies in this case.

Even if otherwise, the Court is not inclined to depart from the uniform findings of the Labor Arbiter, the NLRC and the CA.

"It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, 'the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.' 'The burden of proof rests upon the party who asserts the affirmative of an issue'."[21] Since it is Valencia here who is claiming to be an employee of Classique Vinyl, it is thus incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. He "needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal."[22] Corollary, the burden to prove the elements of an employer-employee relationship, *viz.*: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, lies upon Valencia.

Indeed, there is no hard and fast rule designed to establish the afore-mentioned elements of employer-employee relationship.[23] "Any competent and relevant evidence to prove the relationship may be admitted."[24] In this case, however, Valencia failed to present competent evidence, documentary or otherwise, to support his claimed employer-employee relationship between him and Classique Vinyl. All he advanced were mere factual assertions unsupported by proof.

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18 *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236 (2012).

19 *Cavite Apparel, Incorporated v. Marquez*, 703 Phil. 46, 53 (2013).

20 These exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. *(Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 205-206)

21 *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 480-481.

22 *Javier v. Fly Ace Corporation*, 682 Phil. 359, 372 (2012).

23 *Tenazas v. R. Villegas Taxi Transport*, supra at 481.

24 Id.

In fact, most of Valencia's allegations even militate against his claim that Classique Vinyl was his true employer. For one, Valencia stated in his *Sinumpaang Salaysay* that his application was actually received and processed by CMS which required him to submit the necessary requirements for employment. Upon submission thereof, it was CMS that caused him to sign an employment contract, which upon perusal, is actually a contract between him and CMS. It was only after he was engaged as a contractual employee of CMS that he was deployed to Classique Vinyl. Clearly, Valencia's selection and engagement was undertaken by CMS and conversely, this negates the existence of such element insofar as Classique Vinyl is concerned. It bears to state, in addition, that as opposed to Valencia's argument, the lack of notarization of the said employment contract did not adversely affect its veracity and effectiveness since significantly, Valencia does not deny having signed the same.[25] The CA, therefore, did not err in relying on the said employment contract in its determination of the merits of this case. For another, Valencia himself acknowledged that the pay slips[26] he submitted do not bear the name of Classique Vinyl. While the Court in *Vinoya v. National Labor Relations Commission*[27] took judicial notice of the practice of employer to course through the purported contractor the act of paying wages to evade liabilities under the Labor Code, hence, the non-appearance of employer's name in the pay slip, the Court is not inclined to rule that such is the case here. This is considering that although CMS claimed in its supplemental Position Paper/Comment that the money it used to pay Valencia's wages came from Classique Vinyl,[28] the same is a mere allegation without proof. Moreover, such allegation is inconsistent with CMS's earlier assertion in its Position Paper[29] that Valencia received from it non-cash wages in an approximate amount of ₱3,000.00. A clear showing of the element of payment of wages by Classique Vinyl is therefore absent.

Aside from the afore-mentioned inconsistent allegations of Valencia, his claim that his work was supervised by Classique Vinyl does not hold water. Again, the Court finds the same as a self-serving assertion unworthy of credence. On the other hand, the employment contract which Valencia signed with CMS categorically states that the latter possessed not only the power of control but also of dismissal over him, *viz.*:

> xxxx
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> 2. That the employee shall observe all rules and regulations of the company during the period of employment and [the] lawful instructions of the management or its representatives. Failure to do so or if performance is below company standards, management [has] the right to immediately cancel this contract.

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25 *Gelos v. Court of Appeals*, 284-A Phil. 114, 120 (1992)

26 NLRC records, pp. 30-31.

27 381 Phil. 460, 480 (2000).

28 See CMS' Position Paper/Comment, Supplemental, NLRC records, pp. 144-147 at 146.

29 Id. at 36-39.

x x x x[30]

Clearly, therefore, no error can be attributed on the part of the labor tribunals and the CA in ruling out the existence of employer-employee relationship between Valencia and Classique Vinyl.

Further, the Court finds untenable Valencia's argument that neither Classique Vinyl nor CMS was able to present proof that the latter is a legitimate independent contractor and therefore, unable to rebut the presumption that a contractor is presumed to be a labor-only contractor. "Generally, the presumption is that the contractor is a labor-only [contractor] unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like."[31] Here, to prove that CMS was a legitimate contractor, Classique Vinyl presented the former's Certificate of Registration[32] with the Department of Trade and Industry and, License[33] as private recruitment and placement agency from the Department of Labor and Employment. Indeed, these documents are not conclusive evidence of the status of CMS as a contractor. However, such fact of registration of CMS prevented the legal presumption of it being a mere labor-only contractor from arising.[34] In any event, it must be stressed that "in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees."[35] The facts of this case, however, failed to establish that there is any circumvention of labor laws as to call for the creation by the statute of an employer-employee relationship between Classique Vinyl and Valencia. In fact, even as against CMS, Valencia's money claims has been debunked by the labor tribunals and the CA. Again, the Court is not inclined to disturb the same.

In view of the above disquisition, the Court finds no necessity to dwell on the issue of whether Valencia was illegally dismissed by Classique Vinyl and whether the latter is liable for Valencia's money claims.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed December 5, 2012 Decision and March 18, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120999 are **AFFIRMED**.

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30 Id. at 139.

31 *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, 681 Phil. 299, 311 (2012).

32 NLRC records, p. 183.

33 Id. at 184.

34 *Babas v. Lorenzo Shipping Corporation*, 653 Phil. 421, 433 (2010).

35 *7K Corporation v. National Labor Relations Commission*, 537 Phil. 664, 680-681 (2006).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice