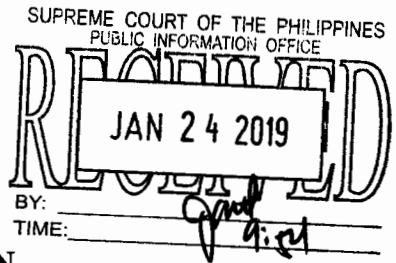




Republic of the Philippines  
**Supreme Court**  
 Manila



**SPECIAL THIRD DIVISION**

**SPS. FELIX A. CHUA and  
 CARMEN L. CHUA;  
 JAMES B. HERRERA;  
 EDUARDO L. ALMENDRAS;  
 MILA NG ROXAS;  
 EUGENE C. LEE;  
 EDICER H. ALMENDRAS;  
 BENEDICT C. LEE;  
 LOURDES C. NG; and LUCENA  
 INDUSTRIAL CORPORATION,  
 LUCENA GRAND CENTRAL  
 TERMINAL, INC., represented by  
 FELIX A. CHUA,**

**Petitioners,**

**G.R. No. 215999**

Present:

**BERSAMIN, C.J.,  
 CAGUIOA,  
 TIJAM,  
 GESMUNDO, and  
 \*REYES, JR., J., JJ.**

**- versus -**

Promulgated:

**UNITED COCONUT PLANTERS  
 BANK; ASSET POOL A (SPV-  
 AMC); REVERE REALTY AND  
 DEVELOPMENT CORPORATION;  
 JOSE C. GO; and the REGISTRAR  
 OF DEEDS OF LUCENA CITY,**

**Respondents.**

**December 17, 2018**

*Wilfredo Legitan*

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**RESOLUTION**

**BERSAMIN, C.J.:**

We hereby consider and resolve: (1) the respective motions for reconsideration filed by respondents United Coconut Planters Bank

\* In lieu of Justice Ramon Paul L. Hernando, who has inhibited from the case because his spouse is a lawyer in the Office of the Government Corporate Counsel, who represents one of the parties, per the raffle of December 11, 2018.

(UCPB),<sup>1</sup> Asset Pool A,<sup>2</sup> and Revere Realty Corp. and Jose Go;<sup>3</sup> (2) the motion to inhibit the Third Division, and to reassign the case to another Division of the Court by raffle;<sup>4</sup> and (3) the urgent motions to refer the case to the Court *En Banc*.<sup>5</sup>

### Antecedents

For perspective, the Court revisits the factual and procedural antecedents.

Petitioners Felix A. Chua and Carmen L. Chua (Spouses Chua) and their co-petitioners entered into a Joint Venture Agreement<sup>6</sup> (JVA) with Gotesco Properties, Inc. (Gotesco) for the development of petitioners' properties into a subdivision. Pursuant to the JVA, deeds of absolute sale were executed to transfer 32 parcels of land to Revere Realty and Development Corporation (Revere), a corporation controlled and represented by Jose C. Go. The deeds of absolute sale were in turn complemented by two deeds of trust,<sup>7</sup> both dated April 30, 1998. The deeds of trust confirmed that the petitioners remained the true and absolute owners of the properties.

Subsequently, on March 21, 2000, petitioners Spouses Chua and Lucena Grand Central Terminal, Inc. (LGCTI), on the one hand, and respondent United Coconut Planters Bank (UCPB), on the other, entered into a Memorandum of Agreement (MOA) to consolidate petitioners' obligations as of November 30, 1999 to UCPB amounting to ₱204,597,177.04.<sup>8</sup> They agreed to deduct ₱103,893,450.00 from such consolidated amount in exchange for petitioners' 30 parcels of land and the improvements existing thereon. To implement the MOA as regards the conveyance of the properties, petitioners executed a Real Estate Mortgage (REM) involving 26 of the 30 parcels of land also on March 21, 2000.<sup>9</sup> UCPB and Revere executed another REM involving 18 properties on the same day.<sup>10</sup> Apparently, UCPB agreed to waive the penalties and interests due on petitioners' obligations amounting to ₱32,703,727.04 thereby leaving a balance of ₱68,000,000.00. To settle such balance of petitioners' liability, the parties executed another agreement, the Deed of Assignment of

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<sup>1</sup> *Rollo* (Vol. 3), pp. 1569-1605.

<sup>2</sup> *Id.* at 1249-1367.

<sup>3</sup> *Id.* at 1234-1246.

<sup>4</sup> *Id.* at 1211-1218.

<sup>5</sup> *Id.* at 1608-1674; (Vol. 4), 1825-1838.

<sup>6</sup> *Rollo* (Vol. 1), pp. 204-214.

<sup>7</sup> *Id.* at 215-220.

<sup>8</sup> *Id.* at 237-243.

<sup>9</sup> *Id.* at 245-260.

<sup>10</sup> *Id.* at 261-274.

Liabilities,<sup>11</sup> converting the balance of ₱68,000,000.00 into equity interest in LGCTI in favor of UCPB.

Enforcing petitioners' REM as well as the Revere REM, UCPB foreclosed the mortgages, and the properties were sold for a total bid price of ₱227,700,000.00.

On February 14, 2003, UCPB and LGCTI executed a deed of assignment of liabilities whereby LGCTI would issue 680,000 preferred shares of its stocks to UCPB to offset its remaining obligations totalling ₱68,000,000.00.

On September 4, 2003, UCPB wrote a letter to the Spouses Chua and LGCTI regarding the transfer of LGCTI shares of stock to its favor pursuant to the deed of assignment of liabilities.<sup>12</sup>

On November 11, 2003, Spouses Chua wrote UCPB to request an accounting of Jose Go's liabilities that had been mistakenly secured by the mortgage of petitioners' properties, as well as to obtain a list of all the properties subject of their REM as well as of the Revere REM for re-appraisal by an independent appraiser. The Spouses Chua further requested that the proceeds of the foreclosure sale of the properties be applied only to petitioners' obligation of ₱204,597,177.04; and that the rest of the properties or any excess of their obligations should be returned to them.<sup>13</sup>

However, UCPB did not heed petitioners' requests. Thus, on February 3, 2004, petitioners filed their complaint against UCPB, Revere, Jose Go, and the Register of Deeds of Lucena City in the RTC in Lucena City.<sup>14</sup> The RTC issued a writ of preliminary injunction at the instance of petitioners.

On October 4, 2004, the RTC declared Jose Go and Revere in default. On February 22, 2005, the RTC denied the motion for reconsideration of Jose Go and Revere.<sup>15</sup>

On September 6, 2005, the RTC, through Judge Virgilio C. Alpajora, rendered a partial judgment against Jose Go and Revere, *viz.*:

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

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<sup>11</sup> Id. at 233-236.

<sup>12</sup> Id. at 21.

<sup>13</sup> Id. at 283.

<sup>14</sup> Id. at 21; 284-301.

<sup>15</sup> Id. at 21.

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK.

d) Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430.

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 and by way of attorney's fees.

**SO ORDERED.**<sup>16</sup>

On November 9, 2005, the RTC modified the partial judgment upon UCPB's motion for reconsideration, but otherwise affirmed it as against Revere and Jose Go, disposing thusly:

**WHEREFORE**, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:

a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development Corp. and Jose Go and not at defendant United Coconut Planters Bank; and

b) The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.

**SO ORDERED.**<sup>17</sup>

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<sup>16</sup> Id. at 623.

<sup>17</sup> Id. at 623-624.

Subsequently, UCPB foreclosed the two REMs. The Apportionment of Bid Price certified by UCPB's Account Officer stated that the properties under mortgage had been sold to UCPB during the foreclosure sale for the aggregate price of ₱227,700,000.00 broken down into ₱152,606,820.00 for petitioners' REM and ₱75,093,180.00 for the Revere REM.<sup>18</sup>

Despite UCPB's subsequent inquiries on the issuance of the preferred shares pursuant to the Deed of Assignment of Liabilities, petitioners refused to issue the stocks. They instead protested the application of the proceeds of the foreclosure sale to settle the personal and corporate obligations of Go for having been without their knowledge and consent. They also protested the inclusion in the foreclosure of the properties under the Revere REM on the ground that such inclusion had been undertaken without their express consent as the owners of the properties.

On January 6, 2009, the Lucena RTC rendered judgment in favor of petitioners.<sup>19</sup> On appeal by respondents, the Court of Appeals (CA) reversed the RTC.<sup>20</sup>

In the decision of August 16, 2017,<sup>21</sup> the Court reversed the decision of the CA and reinstated the judgment of the RTC, disposing thusly:

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** the decision of the Court of Appeals promulgated on March 25, 2014 in CA-G.R. No. 93644; **REINSTATES** the judgment rendered on January 6, 2009 by the Regional Trial Court, Branch 59, in Lucena City, with the addition of TCT No. 89334, to wit:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:

a. Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 have been fully paid;

b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;

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<sup>18</sup> Id. at 383.

<sup>19</sup> Id. at 612-632; penned by Judge Virgilio C. Alpajora.

<sup>20</sup> Id. at 11-51; penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justice Jane Aurora Lantion, and Associate Justice Nina G. Antonio-Valenzuela.

<sup>21</sup> *Rollo* (Vol. 2), pp. 1190-1209.

c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g. Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

i. The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

ii. Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum*, should be imposed, to be computed from the time the judgment becomes

final and executory until fully satisfied, as compensatory damages;

- iii. Php1,000,000.00 as moral damages;
- iv. Php100,000.00 as exemplary damages;
- v. Php2,000,000.00 as attorney's fees; and
- vi. Costs of suit;

SO ORDERED.

and **DIRECTS** respondents, except the Registrar of Deeds of Lucena City and the *Ex-Officio* Sheriff of Lucena City, to pay the costs of suit.

**SO ORDERED.**<sup>22</sup>

Hence, the motions for reconsideration.

### Issues

Through their respective motions for reconsideration, UCPB, Asset Pool A, Revere and Jose C. Go assail the decision of August 16, 2017 on supposed procedural and substantive infirmities.

Asset Pool A particularly submits that:

I. The Honorable Court erred in assuming that the petitioners were misled into signing or agreeing to the stipulations in the Petitioners' REM, MOAs, etc. as they were supplied by UCPB itself and in concluding that UCPB is a mortgagee in bad faith.

II. The Honorable Court erred in nullifying the Revere REM executed by Jose Go as titles registered under REVERE are merely held "in trust" by Jose Go.

The Honorable Court erred in finding that petitioners have no knowledge or conformity to the Revere REM.

Consequently, the Honorable Court committed grave error in ordering UCPB to execute Deeds of Reconveyance in favour of petitioners of real properties listed in the Revere REM.

III. The Honorable Court committed grave abuse of discretion when it ruled that the proceeds of foreclosure sale of properties to be conveyed to UCPB should have been applied to fully extinguish the debts of Spouses Chua and LGCTI to UCPB before they can be applied to the obligations of Jose Go to the Bank. This condition is nowhere to be found

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<sup>22</sup> Id. at 1208-1209.

in the First MOA, Second MOA, Petitioners REM, Revere REM and the Deed of Assignment.

IV. The Honorable Court erred in declaring that the Real Estate Mortgage dated June 2, 1997 is deemed extinguished by the Memorandum of Agreement dated March 21, 2000.

As Spouse Chua and LCTI have remaining outstanding principal obligation to UCPB and/or its successor-in-interest APA, it is serious error for the Honorable Court to order the release of the mortgage and return of titles.

V. The Honorable Court erred in declaring that the remaining loan obligations of petitioners LGCTI and Spouses Chua are fully paid notwithstanding their non-payment.

VI. There is no legal and factual basis for the Honorable Court to award petitioners actual damages, interest, moral damages, exemplary damages, attorney's fees and costs of suit against UCPB.

VII. The Honorable Court promulgated the Decision of August 16, 2017 in less than two (2) days from the assignment or appointment to office of four of the five Members of the Supreme Court. This clearly violated the Constitution and the Internal Rules of the Supreme Court and resulted to the violation of respondents' right to procedural due process. Hence, it is null and void.

VIII. The Decision of August 16, 2017 is null and void for failure to comply with the substantive requirement of Sec. 14, Article VIII of the Constitution, *i.e.* "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

This resulted to further violation of respondents' right to due process.<sup>23</sup>

On the other hand, UCPB cites the following errors, namely:

I. THE HONORABLE COURT ERRED IN HOLDING THAT THE LOAN OBLIGATIONS OF HEREIN PETITIONERS TO UCPB UNDER THE MEMORANDUM OF AGREEMENT DATED MARCH 21, 2000 HAVE BEEN FULLY PAID

II. THE HONORABLE COURT ERRED IN DECLARING THE REAL ESTATE MORTGAGE DATED JUNE 02, 1997 AS HAVING BEEN EXTINGUISHED BY THE MEMORANDUM OF AGREEMENT DATED MARCH 21, 2000

III. THE HONORABLE COURT ERRED IN NULLIFYING THE DEED OF REAL ESTATE MORTGAGE DATED MARCH 21, 2000 EXECUTED BY REVERE AND GO IN FAVOR OF UCPB AND THE

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<sup>23</sup> *Rollo* (Vol. 3), pp. 1305-1307.



DEED OF ASSIGNMENT OF LIABILITY DATED FEBRUARY 14, 2003 EXECUTED BY HEREIN PETITIONERS IN FAVOR OF UCPB

IV. THE HONORABLE COURT ERRED IN HOLDING THAT HEREIN PETITIONERS WERE ENTITLED TO EXCESS FORECLOSURE PROCEEDS OF ₱23,000,000.00

V. THE HONORABLE COURT ERRED IN ORDERING UCPB TO RETURN ₱200,000,000.00 WORTH OF PROPERTIES TO HEREIN PETITIONERS

VI. WORSE, THE HONORABLE COURT ERRED IN IMPOSING INTERESTS AT 6% PER ANNUM ON THE RETURN OF PROPERTIES

VII. THE HONORABLE COURT ERRED IN ORDERING UCPB TO PAY PETITIONERS MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT.<sup>24</sup>

On their part, Revere and Jose C. Go posit that they had not been duly heard on the issues resolved by the Court.

### **Ruling of the Court**

After careful consideration of the motions for reconsideration, we find and declare that respondents have not offered any argument or tendered any matter that would have justifiably overturned the factual basis and *ratio decidendi* of the decision of August 16, 2017. Accordingly, we deny the motions for reconsideration, and reiterate the decision.

#### **1.**

#### **On the validity of the decision of August 16, 2017**

Asset Pool A has taken issue against the promulgation of our decision on August 16, 2017, alleging that the promulgation was made –

x x x less than two (2) days from the assignment or appointment to office of four of the five Members of the Supreme Court. This clearly violated the Constitution and the Internal Rules of the Supreme Court and resulted to the violation of respondents' right to procedural due process. Hence, it is null and void.

and insisting that the decision was thereby rendered:

x x x null and void for failure to comply with the substantive requirement of Sec. 14, Article VIII of the Constitution, *i.e.* "No decision shall be

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<sup>24</sup> Id. at 1588-1589.

rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

Additionally, respondents seek the referral of the case to the *Banc* on the ground of the supposed bias of the deciding Members of the Division, whose recusal they hereby also seek.

The attack against the validity of the decision is entirely bereft of merit and justification.

For sure, every party-litigant has the right to an impartial and disinterested tribunal. In view of this right, every party may seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling a case. Nonetheless, the invocation of the right is always weighed against the duty of the judge to decide cases without fear of repression.<sup>25</sup>

The motion by the litigant for the inhibition or disqualification of a judge is regulated by the *Rules of Court*. Section 1,<sup>26</sup> first paragraph, Rule 137 of the *Rules of Court* stipulates that a judge or judicial officer shall be *mandatorily disqualified* to sit in any of the instances enumerated therein, namely: where he, or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise; or where he is related to either party within the sixth degree of consanguinity or affinity; or where he is related to counsel within the fourth degree; or where he has been executor, administrator, guardian, trustee or counsel; or where he has presided in any inferior court, and his ruling or decision is the subject of review. The second paragraph of the rule concerns voluntary inhibition; and allows the judge, in the exercise of his sound discretion, to disqualify himself from sitting in a case “for just or valid reasons other than those mentioned above.” The exercise of discretion for this purpose is a matter of conscience for him, and is addressed primarily to his sense of fairness and justice.<sup>27</sup>

The grounds for the mandatory inhibition of the Members of the Court, which are analogous to those mentioned in Rule 137 of the *Rules of*

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<sup>25</sup> *Castro v. Mangrobang*, A.M. No. RTJ-16-2455, April 11, 2016, 789 SCRA 67, 85.

<sup>26</sup> Section 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

<sup>27</sup> *Castro v. Mangrobang*, note 25, at 83.

*Court*, are embodied in Section 1, Rule 8 of the *Internal Rules of the Supreme Court*,<sup>28</sup> quoted as follows:

Section 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) The Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) The Member of the Court was counsel, partner, or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

(c) The Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) The Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity;

(e) The Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) The Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

The grounds for seeking the inhibition of the Members of the Court must be stated in the motion. Yet, in now seeking the inhibition of all the Members of the Third Division who have ruled on the appeal, respondents neither advert to any of the grounds for mandatory inhibition nor point to the bias or partiality of said Members. Their motion only suggests that the earlier voluntary inhibition by Justice Velasco would not deter him from wielding undue influence over the remaining Members of the Third Division because he remained their Chairman.

The suggestion assaults not only Justice Velasco's character but also the character of the remaining Members of the Third Division. The assault is both unfair, and even worse, presumptuous. Indeed, Justice Velasco, following his self-disqualification, had nothing more to do with the case. At any rate, respondents ignore that the remaining Members of the Third

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<sup>28</sup> A.M. No. 10-4-20-SC, May 7, 2010.

Division would not be influenced by a disqualified Member upon matters involved in the case in which the latter no longer takes part.

Moreover, respondents' calling now for the inhibition of the Members of the Third Division only after they had rendered their decision adversely was no longer a viable remedy. Under Section 2, Rule 8 of the *Internal Rules of the Supreme Court*, the granting of any motion for the inhibition of a Division or a Member of the Court after a decision on the merits of the case had been rendered is forbidden except if there is some valid or just reason (such as a showing of graft and corrupt practice, or such as a valid ground not earlier apparent).

Respondents' motion to refer the case to the Court *En Banc* is equally unworthy of consideration. In this regard, the grounds to justify a referral of any case to the *Banc* are long recognized. Section 3, Rule 2 of the *Internal Rules of the Supreme Court* specifically enumerates the matters and cases that the Court *En Banc* shall act on, *viz.*:

SEC. 3. *Court en banc matters and cases.* – The Court *en banc* shall act on the following matters and cases:

- (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
- (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;
- (c) cases raising novel questions of law;
- (d) cases affecting ambassadors, other public ministers, and consuls;
- (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;
- (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;
- (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

- (h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts;
- (i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed;
- (j) cases involving conflicting decisions of two or more divisions;
- (k) cases where three votes in a Division cannot be obtained;
- (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;
- (m) subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;
- (n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and
- (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.

None of the aforecited matters and cases is applicable to this case, for respondents did not show in their motion how, if at all, this case came under any of the matters and cases listed in Section 3, Rule 2 of the *Internal Rules of the Supreme Court*.

Respondents did not also demonstrate how the Third Division could have contravened the procedures for handling the appeal set in the *Internal Rules of the Supreme Court*. Their insistence that Justice Martires and Justice Gesmundo had not studied the case prior to the deliberations and voting held on August 16, 2017 was speculative, if not outrightly false. The truth is that the four deciding Members of the Third Division deliberated and unanimously voted on the result. The fifth Member, Justice Caguioa, was absent because he was then on leave, but his absence did not render the deliberation and voting irregular. Far to the contrary, the deliberation and voting conformed to Section 4, second paragraph, Rule 8 of the *Internal Rules of the Supreme Court*, which reads:

Section 4. x x x

x x x x

When a Member of the Division is on leave, he/she shall no longer be replaced as long as there is a quorum of at least three (3) members, and said absent Member who participated in the deliberation of the case shall be allowed to leave his or her vote pursuant to Section 4 of Rule 12.

Worthy to stress is that the Court is composed of 15 Members who are assigned to the three Divisions.<sup>29</sup> The assignment of the Members to the Divisions pursuant to the *Internal Rules of the Supreme Court* is based on seniority and on the vacancies to be filled.<sup>30</sup> All the decisions promulgated and actions taken in Division cases rest upon the concurrence of at least three Members of the Division who actually take part in the deliberations and vote.<sup>31</sup> The decisions or resolutions of each Division are not any less the decisions or resolutions of the Court itself.<sup>32</sup> In short, the Court *En Banc* is not appellate in respect of the Divisions, for each Division is like the Court *En Banc* itself, not the inferior to the Court *En Banc*.<sup>33</sup>

Lastly, respondents point to the initial dismissal of the appeal. However, such initial dismissal no longer matters considering that the Court already reconsidered it and reinstated the appeal as a consequence. As such, the decision on the merits promulgated herein was entirely valid and effective.

## 2.

### **Response to and comments on Justice Caguioa's separate opinion**

The decision of August 16, 2018 has expressly concluded that the Memorandum of Agreement (MOA) of March 21, 2000 reflected the consolidation of all obligations of petitioners as of November 30, 1999.

Although he agrees that the CA erred in declaring that the 1997 REM between petitioners and UCPB still subsisted despite the execution of the MOA of March 21, 2000, Justice Caguioa contends that the fact that the Revere REM and petitioners' REM had been executed on the same date indicated that petitioners had expressly consented to Revere REM; hence, the Revere REM was valid. He concludes that UCPB's foreclosure of the mortgage covering the 10 parcels of land involved in the Revere REM was effective; and that only UCPB's application of payments was not proper. As a result, he recommends that paragraphs c., d. and e., to wit:

<sup>29</sup> See Section 4(1), Article VIII of the 1987 Constitution.

<sup>30</sup> See Section 9, Rule 2 of the *Internal Rules of the Supreme Court*, which states:

SEC. 9. *Composition and reorganization of a Division.* – The composition of each Division shall be based on seniority as follows:

(a) First Division – Chief Justice, the fourth in seniority as working chairperson, the seventh in seniority, the tenth in seniority, and the thirteenth in seniority.

(b) Second Division – the second in seniority as Chairperson, the fifth in seniority, the eighth in seniority; the eleventh in seniority, and the fourteenth in seniority.

(c) Third Division – the third in seniority as Chairperson, the sixth in seniority, the ninth in seniority, the twelfth in seniority, and the fifteenth in seniority.

The Chief Justice may, however, consider factors other than seniority in Division assignments. The appointment of a new Member of the Court shall necessitate the reorganization of Divisions at the call of the Chief Justice.

<sup>31</sup> Section 1(b), Rule 12 of the *Internal Rules of the Supreme Court*.

<sup>32</sup> SC Circular No. 2-89, February 07, 1989.

<sup>33</sup> *Firestone Ceramics, Inc. v. Court of Appeals*, G.R. No. 127022, June 28, 2000, 334 SCRA 465, 478.

x x x x

c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

x x x x

be deleted from the *fallo* of the decision of August 16, 2017, and the following dispositive paragraph should instead be stated, namely:

x x x x

c. Declaring the Deed of Real Estate Mortgage dated March 21, 2000 executed by respondents Revere and Jose Go in favor of co-respondent United Coconut Planters Bank to be valid;

x x x x

The recommendation of Justice Caguioa is unacceptable. The original paragraph c. found in the *fallo* of the decision of August 16, 2017, *supra*, should stand and be maintained for several substantial and practical reasons.

To start with, we should not ignore that the Lucena RTC as the trial court rendered against respondents Jose Go and Revere a partial judgment on September 6, 2005, disposing therein as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO, and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) **Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK.**

d) **Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430.**

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 and by way of attorney's fees.

SO ORDERED.<sup>34</sup>

The partial judgment became final and executory because Go and Revere did not appeal.

If we were to accept Justice Caguioa's recommendation to declare the Revere REM valid and to adopt his proposed disposition, we would be abetting an irreconcilable conflict between his recommendation, on one hand, and the *fallo* of the final and immutable September 6, 2005 partial judgment, on the other. It is true that the November 9, 2005 order of the Lucena RTC clarified that only Go and Revere were to be covered and adversely affected by the partial judgment; but it is also undeniable that Justice Caguioa's proposed disposition would give rise to the situation of the Revere REM being validated despite being already nullified under the September 6, 2005 partial judgment rendered in the same case. The consequences would be difficult and ridiculous, for how would petitioners enforce in their own favor *by writ of execution* the already final and executory partial judgment for the reconveyance of their 32 lots subject of the Deeds of Trust if the subsequent result decreed in the same case were to be as recommended by Justice Caguioa?

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<sup>34</sup> *Rollo*, p. 623 (note – this *fallo* is quoted in the decision of August 16, 2017 under note 16).



Secondly, Justice Caguioa assumes that petitioners had given their express consent to the Revere REM from the fact that the titles of the parcels of land subject of the Revere REM were then in the name of Revere. He theorizes that the only way petitioners could have “conveyed and transferred the parcels of land to UCPB was for petitioners to cause Revere to execute the Revere REM.”

The assumption lacks factual basis. For one, the written agreements of the parties contained no express stipulation to support the assumption. Also, UCPB presented no evidence during the trial to establish the giving of petitioners’ consent – whether express or implied – to the Revere REM. On the contrary, the MOA nowhere expressly authorized Revere to enter into and execute the REM in favor of UCPB in order to implement the terms of the MOA or realize the object of the MOA. In this connection, the Lucena RTC expressly observed as follows:

The Court therefore affirms the nullity of the Revere REM dated March 21, 2000 (Exhibit “I”, Exhibit “7-APA”) executed by Revere in favor of defendant UCPB. **There is no proof that plaintiffs have consented to the application of the properties listed in Annex “B” thereof to the loan obligation of defendant Jose Go. UCPB is therefore lawfully bound to return to plaintiffs TCT Nos. (numbers omitted), conformably with this court’s disquisition in the Partial Judgment rendered on September 6, 2005.**

**The conformity of the plaintiffs through Felix A. Chua only appears on the Plaintiff’s REM dated March 21,2000 (Exhibit ‘G’ , Exhibit “6-APA”).<sup>35</sup> x x x**

Thirdly, the stipulations of the MOA of March 21, 2000 related exclusively to the obligation of petitioners, to wit:

(A) As of 30 November 1989, the BORROWER has outstanding obligations due in favor of the Bank in the aggregate amount of Two Hundred Four Million Five Hundred Ninety Seven Thousand One Hundred Seventy Seven and 04/100 Pesos (₱204,597,177.04), Philippine currency, inclusive of all interest, charges and fees (the “Obligation”).”

The MOA of March 21, 2000 made no mention therein that petitioners had given their consent and approval to the Revere REM to securitize the obligations of Go. As such, it was unwarranted to assume that petitioners had consented to and approved the Revere REM, for to do so would run counter to the Parol Evidence Rule embodied in Section 9, Rule 130 of the *Rules of Court*, viz.:

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<sup>35</sup> RTC Decision, p. 13 (bold underscoring supplied for emphasis).

Section 9. *Evidence of written agreements.* – When the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

x x x x

Under the Parol Evidence Rule, the affected party's pleadings must allege the basis for the exception, and only then may such party adduce evidence thereon.<sup>36</sup> However, UCPB adduced no evidence showing that the Spouses Chua had consented to or approved the Revere REM.

Moreover, the express terms of the MOA of March 21, 2000, which UCPB itself had prepared and drafted, did not indicate that the Spouses Chua had consented to or approved the Revere REM. On the contrary, Section 5.4 of the MOA expressly forbade the parties from varying or modifying the written terms thereof. For reference, Section 5.4 is quoted hereunder:

Section 5.4 Entire Agreement – This Agreement constitutes the entire, complete and exclusive statement of the terms and conditions of the agreement between the parties with respect to the subject matter referred to herein. **No statement or agreement, oral or written, made prior to the signing hereof and no prior conduct or practice by either party shall vary or modify the written terms embodied hereof, and neither party shall claim any modification of any provision set forth herein unless such modification is in writing and signed by both parties.**

Also underscoring the non-consent of petitioners, the Revere REM was signed only by Go acting for and in behalf of Revere. Nowhere in any of its 11 pages did the Revere REM bear the signatures of the Spouses Chua although its Article I patently lumped together the obligations of petitioners and Go at ₱404,597,177.04, as follows:

<sup>36</sup> The Parol Evidence Rule and its exceptions are stated in Section 9, Rule 130 of the *Rules of Court*, viz.:

Section 9. *Evidence of written agreements.* - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, **a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:**

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The terms "agreement" includes wills. (7a)

1. The payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the MORTGAGORS and/or by LUCENA GRAND CENTRAL TERMINAL, INC., SPOUSES FELIX AND CARMEN CHUA and JOSE C. GO (hereinafter referred to as DEBTORS) in the total aggregate amount of FOUR HUNDRED FOUR MILLION FIVE HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED SEVENTY SEVEN and 04/100 PESOS (₱404,597,177.04).

Fourthly, UCPB admittedly knew of stipulation 2<sup>37</sup> in the Deeds of Trust whereby Revere expressly acknowledged that it could not dispose of, sell, transfer, convey, lease or mortgage the 12 parcels of land “without the written consent of the TRUSTORS first obtained.” In that regard, the decision of August 16, 2017 has pointed out:

Additionally, UCPB could not now feign ignorance of the deeds of trust. As the RTC aptly pointed out, UCPB’s own Vice President expressly mentioned in writing that UCPB would secure from Jose Go the titles necessary for the execution of the mortgages. As such, UCPB’s actual knowledge of the deeds of trust became undeniable. In addition, UCPB, being a banking institution whose business was imbued with public interest, was expected to exercise much greater care and due diligence in its dealings with the public. Any failure on its part to exercise such degree of caution and diligence would invariably stigmatize its dealings with bad faith. It should be customary and prudent for UCPB, therefore, to adopt certain standard operating procedures to ascertain and verify the genuineness of the titles to determine the real ownership of real properties involved in its dealings, particularly in scrutinizing and approving loan applications. By approving the loan application of Revere obviously without making prior verification of the mortgaged properties’ real owners, UCPB became a mortgagee in bad faith.

The foregoing indicated that UCPB had entered into the Revere REM in bad faith, rendering its foreclosure of the Revere REM as patently devoid of factual and legal support.

And, lastly, although the decision of August 16, 2017 points out that neither Revere nor Go was a party to the MOA of March 21, 2000, which concerned only petitioners’ obligation of ₱204,597,177.04, the Revere REM stated the larger amount of ₱404,597,177.04 as the obligation, without mentioning or including therein petitioners’ actual obligation of ₱204,597,144.04. As such, the Revere REM must be struck down as null and void for implicating petitioners in the foreclosure undertaken upon Jose Go’s separate but undetermined liability.

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<sup>37</sup> 2. The TRUSTEE hereby acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage the said twelve (12) parcels of land without the written consent of the TRUSTORS first obtained;

Justice Caguioa further recommends the deletion of paragraph e. of the *fallo* of the decision promulgated on August 16, 2017, which says:

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs' titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

He explains that because petitioners' REM and the Revere REM were valid, and UCPB's foreclosure of such mortgages was consequently validly effected, the consolidated obligations of petitioners were extinguished and the properties subject of the foreclosure should be declared to rightfully belong to UCPB. He states:

x x x the two REMS are valid and as admitted by the parties, executed to effect or implement the obligations of the parties as detailed in the MOA. Because the REMS were valid and subsisting, their foreclosure was likewise proper and valid as they were done pursuant to the terms and conditions stated in both the REMS and MOA. And if the foreclosure was validly done by UCPB, then the entire consolidated obligations of the Petitioners was extinguished and the properties foreclosed now rightfully belong to UCPB. Consequently, the Decision's directive for UCPB to "execute the appropriate Deeds of Reconveyance in favor of {Petitioners}" and return so much of the {Petitioners'} titles . . . after applying so much of the mortgaged properties . . . to the payment of {Petitioners'} consolidated obligation to the bank is without legal basis. That said, UCPB's obligation is, as stated earlier, to return the excess of the foreclosure proceeds to the Petitioners.

We cannot join Justice Caguioa's recommendation. In the following disquisition, we graphically explain why paragraph e. of the *fallo* of the decision of August 16, 2017 – "ordering defendant UNITED COCONUT PLANTERS BANK to return so much of plaintiff's titles, of their choice, equivalent to Php 200,000,000.00" – must be maintained and affirmed.

With the Revere REM being null and void as demonstrated herein and, therefore, ineffective, petitioners should not be thereby prejudiced. Consequently, the 10 parcels of land subject of the Revere REM have to be reconveyed to petitioners. **Anent the 20 parcels of land subject of petitioners' REM, title over so much of the 24.8182 hectares (i.e., the total area of the 20 parcels of land) corresponding to their total obligation of ₱204,597,177.04 could remain in the name of UCPB, but the excess thereof should be returned to petitioners. The obligation of petitioners to UCPB would be thereby fully paid.**

Such proper allocation of payment is fair to the parties, and ultimately prevents UCPB's unjust enrichment. As the decision of August 16, 2017 elucidates:

It can be further concluded that UCPB could not have validly assigned to Asset Pool A any right or interest in the ₱68,000,000.00 balance because **the proper application of the proceeds of the foreclosure sale would have necessarily resulted in the full extinguishment of petitioners' entire obligation. Otherwise, unjust enrichment would ensue at the expense of petitioners. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires the concurrence of two conditions, namely: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent a person from enriching himself at the expense of another without just cause or consideration. This principle against unjust enrichment would be infringed if we were to uphold the decision of the CA despite its having no basis in law and in equity.**

The MOA of March 21, 2000 put petitioners' total liability at ₱204,597,177.04. On the other hand, the Revere REM stated the total of ₱404,597,177.04 ostensibly to include the outstanding obligation of Go although the entire extent of such obligation was not specifically disclosed. Given that petitioners' REM involved 20 parcels of land (as distinguished from the 10 parcels of land involved in the Revere REM), we should determine the true extent of petitioners' liability by extracting the ratio of ₱204,597,177.04 to the total of ₱404,597,177.04. This results to 50.56%, and the remainder is 49.44%, which was equivalent to ₱200,000,000.00. The latter amount represented petitioners' *unused* portion of the total credit accommodation of ₱404,597,177.04. Hence, UCPB should return to petitioners the equivalent of 49.44% of the total area of the 30 parcels of land involved in the transactions.

This proportionality was similarly discussed by the trial court, stating:

From the foregoing provisions, it is evident that the over-all intent of the said Real Estate Mortgage was to secure ALL past and future obligations of the plaintiffs and Jose Go to the extent of Php404,597,177.04. Considering that the outstanding obligation of the plaintiffs under the MOA dated March 21, 2000 were re-structured and consolidated to the final amount of Php204,597,177.04 which is 50.56% of the entire credit accommodation, defendant UCPB had no right to foreclose on the remaining 49.44% of the credit accommodation, which plaintiffs had not yet availed of at the time of the foreclosure.

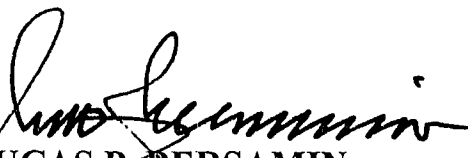
As mentioned, the consolidated area of the 10 parcels of land involved in the Revere REM accounted for 121,907 square meters, while the consolidated area of the 20 parcels of land under petitioners' REM aggregated 248,182 square meters. In all, The 30 parcels of land had a combined area of 370,089 square meters. To derive the value per square meter, therefore, ₱404,597,177.04 is divided by 370,089, and the result is ₱1,093.24/square meter.

To determine the exact extent of the 370,089 square meters to be considered as payment to UCPB, we should multiply 370,089 by 50.568%, and the product is 187,146.60, which, rounded off, is 187,147. Hence, 187,147 multiplied by ₱1,093.24 results in ₱204,597,177.04, which sum represented the full payment to UCPB of petitioners' obligation in accordance with the MOA.

To prevent UCPB's unjust enrichment, the reconveyance by UCPB of so much of petitioners' assets as would be equal to the unused portion of their total credit accommodation of ₱404,597,177.04 should be decreed. The product of multiplying 370,089 by 49.43188% is 182,941.95, rounded off to 182,942, which, multiplied by ₱1,093.24, equates to ₱200,000,000.00, the value of petitioners' unused portion.

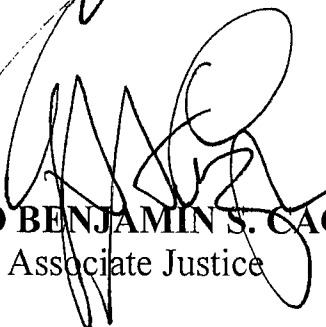
**IN VIEW OF THE FOREGOING**, the Court **DENIES** the respective motions for reconsideration of respondents United Coconut Planters Bank (UCPB), Asset Pool A, and Revere Realty Corp. and Jose Go; the motion to inhibit the Third Division and to reassign the case to another Division of the Court by raffle; and the urgent motions to refer the case to the Court *En Banc*; and **REITERATES IN ALL RESPECTS** the decision promulgated on August 16, 2017.

**SO ORDERED.**

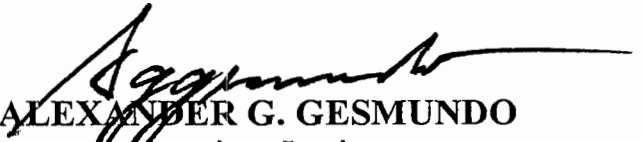
  
**LUCAS P. BERSAMIN**  
 Chief Justice

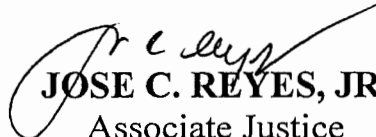
**WE CONCUR:**

*See separate  
 Opinion*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

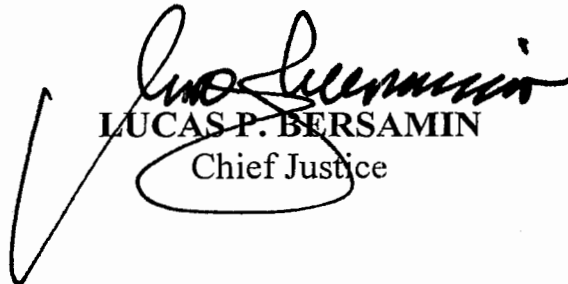
  
**NOEL GIMENEZ TIJAM**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**JOSE C. REYES, JR.**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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