



Republic of the Philippines  
Supreme Court  
Baguio City

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

**SPOUSES LUCIA A. OROZCO  
and CRESENTE R. OROZCO  
(DECEASED), substituted by his heirs,  
namely: JOCELYN O. GUJELING,  
JUDITH O. SEMACIO,  
GENILYN O. PERIABRAS,  
GEMMA O. PERALTA,<sup>1</sup>  
ROCKY A. OROZCO and  
GISSA O. FERRER,<sup>2</sup>**  
Petitioners,

**G.R. No. 222616**

Present:

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J., JR.,\* and  
LAZARO-JAVIER, JJ.

- versus -

**FLORANTE G. LOZANO, SR.  
(DECEASED), substituted by his  
heirs, namely: EPIFANIA LOZANO,  
SHIRLEY L. SALCEDO,  
JOCELYN L. BASTARECHE,  
RACHEL L. GILOS,  
FLORANTE G. LOZANO, JR.,  
and ROBERT G. LOZANO,**  
Respondents.

Promulgated:

**03 APR 2019**

x-----*M. Cabaloc Jr.*-----x

**DECISION**

**CARPIO, J.:**

**The Case**

Before the Court is a petition for review on certiorari<sup>3</sup> assailing the 18 September 2015 Decision<sup>4</sup> and the 8 December 2015 Resolution<sup>5</sup> of the

<sup>1</sup> Also referred to in the records as "Jemma O. Peralta."

\* On official leave.

<sup>2</sup> Also referred to in the records as "Jessie O. Ferrer."

<sup>3</sup> *Rollo*, pp. 5-18. Under Rule 45 of the 1997 Rules of Court.

<sup>4</sup> Id. at 28-37. Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

<sup>5</sup> Id. at 45-46. Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. SP No. 05171-MIN.

### The Facts

On 23 May 1980, Spouses Cresente R. Orozco and Lucia A. Orozco (Spouses Orozco) purchased from Spouses Reynaldo and Floriana Fuentes (Spouses Fuentes) two residential lots both situated in Barangay 2, San Francisco, Agusan del Sur.<sup>6</sup> The lots are identified as Lot No. 3780, Pls-67 and Lot No. 3105, Pls-67. On 4 September 1980, Spouses Orozco sold half of Lot No. 3780 to Florante G. Lozano, Sr. (Lozano) for ₱5,000.00. Half of Lot No. 3780 which was sold by Spouses Orozco to Lozano was assigned as Lot No. 3780-A while the other half retained by Spouses Orozco was designated as Lot No. 3780-B. At the time of the sale, Cresente Orozco (Orozco) used a rope to measure Lot No. 3780, which Orozco thought had an area of 570 square meters. Lozano constructed a building between Lot No. 3780-A and Lot No. 3780-B which Lozano used as a boarding house.<sup>7</sup>

Spouses Orozco did not prevent Lozano from building the boarding house because Spouses Orozco thought that the said boarding house was constructed within the 285 square meter portion which Spouses Orozco sold to Lozano. Allegedly, Spouses Orozco were surprised when Lozano asked them to sign a piece of paper, purportedly an acknowledgment receipt of the payment of ₱500.00 for the additional area on top of the 285 square meters principally sold. Spouses Orozco claimed that they did not sign such acknowledgment receipt because according to them there was no additional area sold to Lozano. On the other hand, Lozano claimed that Spouses Orozco agreed to sell to him an additional 62 square meters of Spouses Orozco's 325.5 square meter portion and that Lozano agreed to make an additional payment of ₱1,000.00 in consideration for the said added portion. On 24 April 1981, evidenced by an acknowledgment receipt, Lozano paid Spouses Orozco ₱400.00. Subsequently, Lozano paid Spouses Orozco ₱300.00, totaling ₱700.00, leaving ₱300.00 as the remaining unpaid balance for the 62 square meter added portion. Without receiving the full payment, Spouses Orozco made repeated demands to Lozano to vacate the portion of Spouses Orozco's lot that Lozano allegedly encroached upon but the latter refused to vacate. Spouses Orozco and Lozano then brought their dispute for barangay conciliation.<sup>8</sup>

On 2 September 1998, Spouses Orozco filed a complaint for Recovery of Possession and Damages with Application for Writ of Preliminary Injunction, docketed as Civil Case No. 648.<sup>9</sup>

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<sup>6</sup> *Rollo*, p. 29.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*



### **The Ruling of the Municipal Circuit Trial Court**

In a Decision<sup>10</sup> dated 12 January 2012, the Municipal Circuit Trial Court (MCTC) of San Francisco-Rosario-Bunawan, Agusan del Sur, ordered Lozano to vacate the portion of Lot No. 3780-B encroached upon and to restore the possession of the said portion to Spouses Orozco. The MCTC ruled that the acknowledgment receipt was not a perfected contract of sale for the added portion of the said property. Hence, there was no valid transfer of ownership to Lozano. The dispositive portion of the MCTC decision reads:

IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered in favor of plaintiffs Sps. Lucia and Cresente Orozco, now deceased and substituted by his heirs, namely: Jocelyn O. Gujeling, Judith O. Semacio, Gumilya O. Periabras, Gemma O. Peralta, Gissa O. Ferrer and Rocky A. Orozco and against defendant Florante G. Lozano, now deceased and substituted by his heirs, namely: Epifania G. Lozano, Shirley L. Salcedo, Jocelyn L. Bastareche, Rachel L. Gilos, Florante G. Lozano, Jr. and Robert G. Lozano. The defendants, their agents and other persons acting in their behalf are hereby ordered:

1. to vacate the portion of Lot No. 3780-B totaling to 111 sq. meters and to restore possession thereof to plaintiffs, the latter having the alternative: (1) to appropriate what has been built without any obligation to pay indemnity therefor, or (2) to demand that the defendants remove what they had built, or (3) to compel the defendants to pay the value of the land; and

2. to indemnify the plaintiffs in accordance with Article 451 of the Civil Code corresponding to the value of the excess area of 71 sq. meters which is Php16,987.26.

3. No pronouncement as to costs.

SO ORDERED.<sup>11</sup>

### **The Ruling of the Regional Trial Court**

In a Decision<sup>12</sup> dated 25 June 2012, the Regional Trial Court (RTC), Branch 6, Prosperidad, Agusan del Sur, reversed the decision of the MCTC. The RTC held that there was a valid contract of sale between Spouses Orozco and Lozano. The MCTC held that where both the area and the boundaries of an immovable are declared, the area covered within the boundaries prevails over the stated area in the deed of sale. Through the perfected contract of sale, Spouses Orozco bound themselves to deliver to Lozano one-half of the actual area within the said boundaries of Lot No. 3780. Moreover, Orozco was not able to prove that his signature in the

<sup>10</sup> Id. at 63-82. Penned by Judge Dymphna C. Gozon-Labindao.

<sup>11</sup> Id. at 81-82.

<sup>12</sup> Id. at 83-88. Penned by Judge Dante Luz N. Viacrusis.



subject acknowledgment receipt was forged.

The dispositive portion of the RTC Decision reads:

WHEREFORE, the appealed decision of the MCTC of San Francisco-Rosario-Bunawan, Agusan del Sur dated January 12, 2012 is hereby modified, and judgment is hereby rendered:

1. Declaring that what plaintiff Cresente R. Orozco sold to defendant Florante G. Lozano, [Sr.] on September 4, 1980 was not merely 285 sq. m. but one-half of Lot 3780 having an actual area of 651 sq. m., therefore the one-half portion sold covered 325.5 sq.m.;

2. Finding that plaintiff Orozco sold to defendant Lozano on April 24, 1981 an additional area of 62 sq. m., increasing Lozano's area to 387 sq. m. actually occupied by him and now by his heirs;

3. Ordering defendants to pay to plaintiffs ₱300.00 which is the balance of the purchase price of ₱1,000.00 for the additional area, with interest of 12 percent *per annum* from April 24, 1981 until the filing of the answer on October 6, 1998;

4. Ordering plaintiffs to respect the ownership and peaceful possession of defendants over the subject portion of Lot 3780.

No costs.<sup>13</sup>

### **The Decision of the CA**

In a Decision dated 18 September 2015, the CA affirmed the Decision of the RTC. The CA held that there was no encroachment on the part of Lozano because the sale of Lot No. 3780-A partook of the nature of a sale of land in a mass under Article 1542 of the Civil Code. By virtue of the valid contract of sale, Spouses Orozco agreed to completely transfer the ownership of half of Lot No. 3780 to Lozano.

The dispositive portion of the CA Decision states:

WHEREFORE, the instant petition for review is hereby DENIED. The Decision dated 25 June 2012 of the Regional Trial Court, Branch 6, Prosperidad City, Agusan del Sur in Civil Case No. 1574, reversing the Decision dated 12 January 2012 of the Municipal Circuit Trial Court of San Francisco, Agusan del Sur is hereby AFFIRMED with MODIFICATION as to the interest, which shall be at the rate of 12% per annum from 24 April 1981 until 30 June 2013 only, and from 1 July 2013 until fully paid, interest shall be at the rate of 6% per annum.

<sup>13</sup> Id. at 87-88.



SO ORDERED.<sup>14</sup>

In a Resolution dated 8 December 2015, the CA denied Spouses Orozco's motion for reconsideration.

Hence, this petition.

### **The Issues**

Whether the contract of sale of Lot No. 3780 between Spouses Orozco and Lozano included the disputed portion.

Whether Lozano is the owner of the disputed portion of Lot No. 3780.

### **The Ruling of this Court**

We deny the petition.

*First*, the contract of sale between Spouses Orozco and Lozano completely transferred the title of ownership of half of Lot No. 3780. Considering that the object of the deed of sale was half of Lot No. 3780, there is no encroachment on the part of Lozano because the sale of Lot No. 3780 was a sale of land made for a lump sum under Article 1542 of the Civil Code. Hence, Lozano owns half of 651 square meters of Lot No. 3780 which is 325.5 square meters assigned as Lot No. 3780-A. *Second*, there was a subsequent perfected contract of sale for an additional portion of 62 square meters of Lot No. 3780-B from Spouses Orozco to Lozano. As evidenced by the acknowledgment receipt dated 24 April 1981, Spouses Orozco agreed to sell to Lozano an additional 62 square meters of Lot No. 3780-B. Spouses Orozco's defense of *forgery* was not proven with clear and convincing evidence. Following the two valid contracts of sale, Lozano has title to 387 square meters of Lot No. 3780-A.

***The sale of Lot No. 3780 between Spouses Orozco and Lozano is a sale of land in a lump sum under Article 1542 of the Civil Code.***

Article 1542 of the Civil Code provides for the sale of land made for a lump sum:

Art. 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no

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<sup>14</sup> Id. at 37.

increase or decrease of the price, although there be a greater or lesser areas or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, **besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract;** and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (Emphasis supplied)

Article 1542 provides that when a contract of sale concerns the delivery of a determinate object, particularly real estate, in consideration for a lump sum payment, the vendor has the obligation to deliver everything within the boundaries even when it exceeds the area or number specified within the said boundaries. Upon delivery, if the area of the real estate set forth in the contract does not coincide with the actual area delivered within the boundaries, Article 1542 provides that there shall be no increase or decrease in the price even if the area be more or less than that indicated in the contract of sale. Under Article 1542, the determinate object of the contract of sale and the property to be delivered is the particular portion of the real estate enclosed within the boundaries mentioned in the contract of sale.

On the other hand, Article 1539 of the Civil Code refers to a sale of real estate made with a statement of the real estate's area at the rate of a certain price for a unit of measure or number, to wit:


Art. 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

**If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract;** but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area of inferior quality, he may rescind the sale. (Emphasis supplied)



In *Esguerra v. Trinidad*,<sup>15</sup> this Court held that in a sale involving real estate the parties may choose between two types of pricing agreements: a unit price contract under Article 1539 where the purchase price is determined by way of reference to a stated rate per area (e.g., ₱1,000.00 per square meter), or a lump sum contract under Article 1542 which states a full purchase price for an immovable the area of which is based on the boundaries stated in the contract of sale.<sup>16</sup>

In *Rudolf Lietz, Inc. v. Court of Appeals*,<sup>17</sup> this Court explained the distinction between Article 1539 and Article 1542 of the Civil Code, to wit:

Article 1539 governs a sale of immovable by the unit, that is, at a stated rate per unit area. In a unit price contract, the statement of area of immovable is not conclusive and the price may be reduced or increased depending on the area actually delivered. If the vendor delivers less than the area agreed upon, the vendee may oblige the vendor to deliver all that may be stated in the contract or demand for the proportionate reduction of the purchase price if delivery is not possible. If the vendor delivers more than the area stated in the contract, the vendee has the option to accept only the amount agreed upon or to accept the whole area, provided he pays for the additional area at the contract rate.

In some instances, a sale of an immovable may be made for a lump sum and not at a rate per unit. **The parties agree on a stated purchase price for an immovable the area of which may be declared based on an estimate or where both the area and boundaries are stated.**

In the case where the area of the immovable is stated in the contract based on an estimate, the actual area delivered may not measure up exactly with the area stated in the contract. **According to Article 1542 of the Civil Code, in the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price although there be a greater or lesser area or number than that stated in the contract.** However, the discrepancy must not be substantial. A vendee of land, when sold in gross or with the description more or less with reference to its area, does not thereby *ipso facto* take all risk of quantity in the land. The use of "more or less" or similar words in designating quantity covers only a reasonable excess or deficiency.

**Where both the area and the boundaries of the immovable are declared, the area covered within the boundaries of the immovable prevails over the stated area. In cases of conflict between areas and boundaries, it is the latter which should prevail. What really defines a piece of ground is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. In a contract of sale of land in a mass, it is well established that the specific boundaries stated in the contract must control over any statement with respect to**

<sup>15</sup> 547 Phil. 99 (2007).

<sup>16</sup> Id. at 108-109.

<sup>17</sup> 514 Phil. 634 (2005).

**the area contained within its boundaries.** It is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. It is sufficient if its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the superficial area is immaterial. Thus, the obligation of the vendor is to deliver everything within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object.<sup>18</sup> (Boldfacing and underscoring supplied)

The Deed of Sale dated 4 September 1980 between Spouses Orozco and Lozano provides for the description of the parcel of land subject of the sale, to wit:

**[A] parcel of land situated at San Francisco, Agusan del Sur, which is one-half portion of Lot No. 3780, Pls-67, containing an area of Two Hundred Eighty Five square meters, which is bounded on the North by a Municipal Road; on the South by Lot No. 3782, Pls-67; on the East by Lot No. 3105, Pls-67, and on the West by Lot No. 3781, Pls-67.<sup>19</sup>** (Emphasis supplied)

In the said Deed of Sale, Spouses Orozco agreed to sell to Lozano “one-half portion of Lot No. 3780.” Lozano, in turn, agreed to pay Spouses Orozco a lump sum of ₱5,000.00 for one-half portion of Lot No. 3780 which was described in the Deed of Sale with specific boundaries. The CA is correct in ruling that Article 1542 of the Civil Code applies in the present case. It is clear that Spouses Orozco were divesting of and ceding to Lozano one-half of Lot No. 3780 for a lump sum payment of ₱5,000.00. Hence, by virtue of the Deed of Sale, the title of ownership over half of 651 square meters of Lot No. 3780 or 325.5 square meters was validly transferred to Lozano. Spouses Orozco cannot invoke the lack of knowledge of the true area of Lot No. 3780 because Spouses Orozco purchased Lot No. 3780 from Spouses Fuentes using the stated boundaries of Lot No. 3780 as reference without securing the assistance of a geodetic engineer to measure the exact land area.

In a contract of sale of real estate contained in a land mass under Article 1542, the specific boundaries stated in the contract must control over any statement with respect to the area contained in the said boundaries. Where both the area and the boundaries of the immovable are declared, the area covered within the boundaries prevails over the stated area in the deed of sale. In case of conflict between the area and boundaries, it is the latter which should prevail. In *Esguerra*, this Court held that under Article 1542, what is controlling is the entire land included within the boundaries, regardless of whether the real area should be greater or smaller than that recited in the deed of sale.<sup>20</sup> Notably, the Deed of Sale validly transferred the title of ownership over half of Lot No. 3780 or 325.5 square meters from Spouses Orozco to Lozano.

<sup>18</sup> Id. at 641-642.

<sup>19</sup> *Rollo*, p. 48.

<sup>20</sup> *Supra* note 15, at 110.



***There was a subsequent perfected contract of sale between Spouses Orozco and Lozano for an additional 62 square meters of Lot No. 3780-B.***

In *Del Prado v. Spouses Caballero*,<sup>21</sup> this Court held that a perfected contract of sale of real estate effectively gives rise to the right to transfer ownership of the real estate from the vendor to the vendee. This Court discussed the essential elements of a contract of sale of real estate, to wit:

Contracts are the law between the contracting parties. Sale, by its very nature, is a consensual contract, because it is perfected by mere consent. The essential elements of a contract of sale are the following: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent. All these elements are present in the instant case.<sup>22</sup>

In the present case, there was a perfected contract of sale for the 62 square meter portion of Lot No. 3780-B from Spouses Orozco to Lozano. There was a meeting of the minds between Spouses Orozco and Lozano when the latter offered to purchase for ₱1,000.00 an additional 62 square meters of Lot No. 3780-B from Spouses Orozco to extend the boundary of his property, Lot No. 3780-A, up to the mango tree.<sup>23</sup> Lozano's offer was accepted by Spouses Orozco and the initial payment of ₱400.00 was made by Lozano as evidenced by the handwritten acknowledgment receipt dated 24 April 1981 signed by Orozco. Subsequently, another payment of ₱300.00 by Lozano was made to Lucia Orozco, totaling the payment of Lozano to ₱700.00, leaving a remaining unpaid balance of ₱300.00, before the dispute was brought to the barangay by Spouses Orozco for resolution.

As a rule, forgery cannot be presumed and must be proved by clear, positive, and convincing evidence. The burden of proof lies on the party alleging forgery.<sup>24</sup> One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.<sup>25</sup> The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.<sup>26</sup>

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<sup>21</sup> 628 Phil. 1 (2010).

<sup>22</sup> *Id.* at 11.

<sup>23</sup> *Rollo*, p. 86.

<sup>24</sup> *Heirs of the Late Felix M. Bucton v. Sps. Go*, 721 Phil. 851, 860 (2013).

<sup>25</sup> *Sps. Alfaro v. Court of Appeals*, 548 Phil. 202, 216 (2007).

<sup>26</sup> *Supra* note 24, at 860.




We agree with the CA that Spouses Orozco failed to prove that the signature of Orozco in the acknowledgment receipt dated 24 April 1981 was forged. During the proceedings in the RTC, Romeo O. Varona, a document examiner of the Philippine National Police Crime Laboratory of Cebu City, testified that the signature in the Deed of Sale and the signature appearing in the acknowledgment receipt were written by one and the same person. The records provide:

Orozco's bare allegation that his signature was forged pales in the light of the testimony of Romeo O. Varona, Document Examiner of the PNP Crime Laboratory, Cebu City, that Orozco's admitted or standard signature in the Deed of Sale to Lozano and the signature on the informal receipt "were written by one and the same person." x x x. While not binding on the court, the opinion of a handwriting expert is helpful and persuasive.<sup>27</sup>

Finally, the legal rate of twelve percent (12%) *per annum* shall be imposed on the remaining unpaid balance of ₱300.00 from 24 April 1981 until 30 June 2013, and from 1 July 2013, the new rate of six percent (6%) *per annum* shall be applied, consistent with Section 1<sup>28</sup> of Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated 16 May 2013.

**WHEREFORE**, the petition is **DENIED**. We **AFFIRM** the 18 September 2015 Decision and the 8 December 2015 Resolution of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 05171-MIN.


**SO ORDERED.**

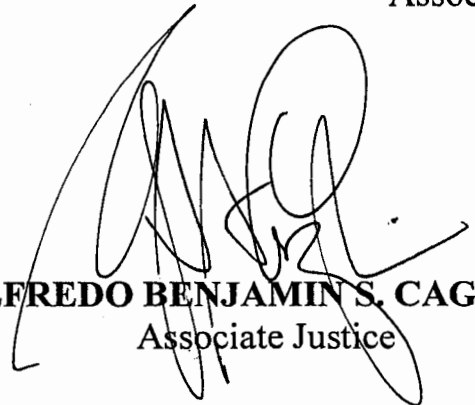
  
**ANTONIO T. CARPIO**  
Associate Justice

<sup>27</sup> *Rollo*, pp. 86-87.

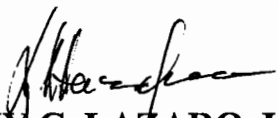
<sup>28</sup> Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

**WE CONCUR:**

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

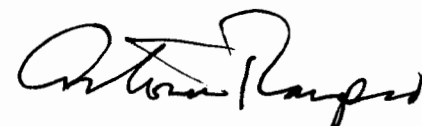
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

(on official leave)  
**JOSE C. REYES, JR.**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

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

  
**ANTONIO T. CAPIO**  
Associate Justice  
Chairperson

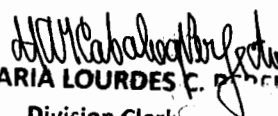
### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN  
Chief Justice

**CERTIFIED TRUE COPY**



MARIA LOURDES C. PINEDA  
Division Clerk  
Second D.