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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FVR SKILLS AND SERVICES EXPONENTS, INC. (SKILLEX), FULGENCIO V. RANA and MONINA R. BURGOS,
Petitioners,

-versus-

JOVERT SEVA, JOSUEL V. VALENCERINA, JANET ALCAZAR, ANGELITO AMPARO, BENJAMIN ANAEN, JR., JOHN HILBERT BARBA, BONIFACIO BATANG, JR., VALERIANO BINGCO, JR., RONALD CASTRO, MARLON CONSORTE, ROLANDO CORNELIO, EDITO CULDORA, RUEL DUNCIL, MERVIN FLORES, LORD GALISIM, SOTERO GARCIA, JR., REY GONZALES, DANTE ISIP, RYAN ISMEN, JOEL JUNIO, CARLITO LATOJA, ZALDY MARRA, MICHAEL PANTANO, GLENN PILOTON, NORELDO QUIRANTE, ROEL RANCE, RENANTE ROSARIO and LEONARDA TANAEL,
Respondents.

G.R. No. 200857

Present:

CARPIO, *J., Chairperson,*
BRION,
MENDOZA,
PERLAS-BERNABE,[*] and
JARDELEZA,[**] *JJ.*

Promulgated:

OCT 2 2 2014

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DECISION

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the December 22, 2011 decision[2] and the March 2, 2012 resolution[3] (*assailed CA*

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[*] Designated as Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 1841 dated October 13, 2014.

[**] Designated as Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 1838 dated October 13, 2014.

rulings) of the Court of Appeals (*CA*) in CA-G.R. SP No. 120991. These assailed CA rulings affirmed the April 28, 2011 decision[4] and the June 16, 2011 resolution[5] (*NLRC rulings*) of the National Labor Relations Commission (*NLRC*) in NLRC LAC No. 08-001687-10 (NLRC NCR Case Nos. 08-11557-09 and 08-11399-09). The NLRC rulings in turn reversed and set aside the June 4, 2010 decision[6] of the labor arbiter (*LA*).

Factual Antecedents

The twenty-eight (28) respondents in this case were employees of petitioner FVR Skills and Services Exponents, Inc. (*petitioner*), an independent contractor engaged in the business of providing janitorial and other manpower services to its clients. **As early as 1998, some of the respondents had already been under the petitioner's employ.**

The respondents' respective names, dates of hiring, and positions are indicated in the table[7] below.

Respondents	Date of Hiring	Position
1. Edito Culdora	February 14, 1998	Janitor
2. Jovert R. Seva	July 29, 1999	Supervisor
3. Valeriano Bingco, Jr.	August 1, 1999	Leadman
4. Michael Pantano	January 22, 1999	Janitor
5. Marlon C. Consorte	May 6, 1999	Janitor
6. Lord Galisim	May 28, 1999	Janitor
7. Sotero A. Garcia, Jr.	April 14, 2000	Janitor
8. Joel G. Junio	May 4, 2000	Service Crew
9. Zaldy R. Marra	August 21, 2001	Janitor
10. Ryan G. Ismen	April 20, 2002	Janitor
11. Glenn Piloton	January 6, 2003	Janitor
12. Rey V. Gonzales	August 15, 2003	Janitor/Sanitation Aide
13. Roel P. Rance	August 16, 2003	Janitor/Sanitation Aide
14. Mervin D. Flores	January 1, 2004	Janitor
15. Renante Rosario	January 13, 2004	Janitor
16. Ronald Castro	February 2, 2004	Service Crew
17. John Hilbert D. Barba	February 22, 2004	Service Crew
18. Noreldo S. Quirante	March 13, 2004	Janitor
19. Benjamin C. Anaen, Jr.	April 22, 2004	Service Crew
20. Rolando G. Cornelio	August 5, 2004	Janitor
21. Angelito A. Amparo	July 28, 2005	Janitor Aide/Sanitation

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1 *Rollo,* pp. 12-31.
2 Penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Amelita G. Tolentino and Samuel H. Gaerlan; id. at 56-74.
3 Id. at 37-38.
4 Penned by Commissioner Teresita D. Castillon-Lora, and concurred in by Commissioners Raul T. Aquino and Napoleon M. Menese; id. at 299-317.
5 Id. at 334-336.
6 Penned by Labor Arbiter Quintin B. Cueto III; id. at 259-274.
7 Id. at 58-59.

		Aide
22. Leonarda Tanael	February 1, 2007	Janitor
23. Janet Alcazar	March 1, 2007	Janitor
24. Dante F. Isip	February 1, 2007	Janitor
25. Carlito Latoja	February 1, 2007	Janitor/ Sanitation Aide
26. Ruel Duncil	February 1, 2007	Janitor/Sanitation Aide
27. Bonifacio P. Batang, Jr.	February 1, 2007	Janitor/Sanitation Aide
28. Josuel Valencerina	February 1, 2007	Supervisor

On April 21, 2008, the petitioner entered into a Contract of Janitorial Service[8] (*service contract*) with Robinsons Land Corporation (*Robinsons*). Both agreed that the petitioner shall supply janitorial, manpower and sanitation services to Robinsons Place Ermita Mall for a period of one year - from January 1, 2008 to December 31, 2008.[9] Pursuant to this, the respondents were deployed to Robinsons.

Halfway through the service contract, the petitioner asked the respondents to execute individual contracts which stipulated that their respective employments shall end on December 31, 2008, unless earlier terminated.[10]

The petitioner and Robinsons no longer extended their contract of janitorial services. Consequently, the petitioner dismissed the respondents as they were project employees whose duration of employment was dependent on the petitioner's service contract with Robinsons.

The respondents responded to the termination of their employment by filing a complaint for illegal dismissal with the NLRC. They argued that they were not project employees; they were regular employees who may only be dismissed for just or authorized causes.[11] The respondents also asked for payment of their unpaid wage differential, 13th month pay differential, service incentive leave pay, holiday pay and separation pay.[12]

The Labor Arbitration Rulings

The LA ruled in the petitioner's favor. He held that the respondents were not regular employees. They were project employees whose employment was dependent on the petitioner's service contract with Robinsons. Since this contract was not renewed, the respondents' employment contracts must also be terminated.[13]

Also, in light of the petitioner's admission during the clarificatory hearing that the respondents were entitled to their wage differential pay, 13th

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8 Id. at 94-98.
9 Id. at 15.
10 Id. at 99-126.
11 Id. at 373.
12 Id. at 146.
13 Id. at 262.

month differential pay and holiday pay, the LA granted the respondents' money claims in the amount of ₱103,501.01.[14]

The respondents disagreed with the LA and appealed to the NLRC, which reversed the LA's ruling, and held that they were regular employees. The NLRC considered that the respondents had been under the petitioner's employ for more than a year already, some of them as early as 1998.

Thus, as regular employees, the respondents may only be dismissed for just or authorized causes, which the petitioner failed to show. The NLRC also awarded the respondents their separation pay of one (1) month for every year of service as well as their full backwages from February 1, 2009 □ the date of their illegal dismissal, until the finality of the decision.[15]

The CA's Ruling

The CA dismissed the petitioner's *certiorari* petition and affirmed the NLRC's decision.

The CA noted that the petitioner individually hired the respondents on various dates from 1998 to 2007, to work as janitors, service crews and sanitation aides. These jobs were necessary or desirable to the petitioner's business of providing janitorial, manpower and sanitation services to its clients. The continuing need for the respondents' services, which lasted for more than a year, validated that the respondents were regular and not project employees.[16]

The CA also ruled that the fixed term employment contracts signed by the respondents had no binding effect. The petitioner only used these contracts to justify the respondents' illegal dismissal; the petitioner never asked the respondents to execute any contract since their initial hiring. Only after it became apparent that the petitioner's service contract with Robinsons would not be renewed (after its expiration on December 31, 2008), did the petitioner ask the respondents to sign their employment contracts.[17] This circumstance, coupled with the threat that the respondents would not be given their salaries if they would not sign the contracts, showed the petitioner's intent to use the contracts to prevent the respondents from attaining regular status.

Lastly, the CA held that petitioners Fulgencio V. Rana (*Rana*) and Monina R. Burgos (*Burgos*), the president and general manager of FVR Skills and Services Exponents, Inc., respectively, are solidarily liable with the corporation for the payment of the respondents' monetary awards. As corporate officers, they acted in bad faith when they intimidated the

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14 Id. at 271.
15 Id. at 310.
16 Id. at 67.
17 Id. at 68.

respondents in the course of asking them to sign their individual employment contracts.[18]

The Petition

The petitioner now submits that the CA erred in ruling that the respondents were regular employees and that they had been illegally dismissed. The respondents' contracts of employments did not only provide for a fixed term, but were also dependent on the continued existence of the Robinsons' service contract.[19] Since this main contract had not been renewed, the respondents' respective employment contracts were properly terminated. Based on this reasoning, no illegal dismissal took place, only the expiration of the respondents' fixed term contracts.

In the absence of any illegal dismissal, the CA also erred in affirming the NLRC's award of separation pay to the respondents.

Lastly, the petitioner asserts that Rana and Burgos should not be held solidarily liable with the corporation for respondents' monetary claims; they have personalities separate and distinct from the corporation.

The Case for the Respondents

The respondents reiterate that even before the execution of the petitioner's service contract with Robinsons, they had already been working for the petitioner between the years 1998 to 2007. Since their hiring, they had been performing janitorial and other manpower activities that were necessary or desirable to the petitioner's business.[20]

They further argue that the employment contracts they executed were void since these were signed under duress; the petitioner threatened not to release their salaries if they would refuse to sign.[21]

Lastly, the respondents assert that the CA did not err in holding Rana and Burgos solidarily liable with the corporation. These officers acted in bad faith when they obliged the respondents to execute the employment contracts under threat.[22]

The Court's Ruling

We resolve to **DENY** the petition.

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18 Id. at 72.
19 Id. at 21.
20 Id. at 366.
21 Id. at 367.
22 Id. at 375.

The respondents are regular employees, not project employees.

Article 280 (now Article 294)[23] of the Labor Code governs the determination of whether an employee is a regular or a project employee.[24]

Under this provision, there are two kinds of regular employees, namely: (1) those who were engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who became regular after one year of service, whether continuous or broken, but only with respect to the activity for which they have been hired.

We distinguish these two types of regular employees from a project employee, or one whose employment was fixed for a specific project or undertaking, whose completion or termination had been determined at the time of engagement.

A careful look at the factual circumstances of this case leads us to the legal conclusion that the respondents are regular and not project employees.

The primary standard in determining regular employment is the **reasonable connection** between the particular activity performed by the employee and the employer's business or trade. This connection can be ascertained by considering the nature of the work performed and its relation to the scheme of the particular business, or the trade in its entirety. [25]

Guided by this test, we conclude **that the respondents' work as janitors, service crews and sanitation aides, are necessary or desirable to the petitioner's business** of providing janitorial and manpower services to its clients as an independent contractor.

Also, the respondents had already been working for the petitioner as early as 1998. **Even before the service contract with Robinsons, the**

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[23] The provisions of the Labor Code had been renumbered due to the taking effect of Republic Act No. 10151, *An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of the Labor Code.*

[24] Article 280 provides:

> Article 280. *Regular and Casual Employment* − The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[25] *Gapayao v. Fulo,* G.R. No. 193493, June 13, 2013, 698 SCRA 485, 500.

respondents were already under the petitioner's employ.[26] **They had been doing the same type of work and occupying the same positions from the time they were hired and until they were dismissed in January 2009.** The petitioner did not present any evidence to refute the respondents' claim that from the time of their hiring until the time of their dismissal, there was no gap in between the projects where they were assigned to. The petitioner continuously availed of their services by constantly deploying them to its clients.

Lastly, under Department Order (*DO*) 18-02,[27] the applicable labor issuance to the petitioner's case, the contractor or subcontractor is considered as the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation.[28]

DO 18-02 grants contractual employees all the rights and privileges due a **regular employee**, including the following: (a) safe and healthful working conditions; **(b) labor standards such as service incentive leave, rest days, overtime pay, holiday pay, 13th month pay and separation pay**; (c) social security and welfare benefits; (d) self-organization, collective bargaining and peaceful concerted action; and **(e) security of tenure**.[29]

In this light, we thus conclude that although the respondents were assigned as contractual employees to the petitioner's various clients, under the law, they remain to be the petitioner's regular employees, who are entitled to all the rights and benefits of regular employment.

The respondents' employment contracts, which were belatedly signed, are voidable.

The records show that at the time of the respondents' dismissal, they had already been continuously working for the petitioner for more than a year. Despite this, they never signed any employment contracts with the petitioner, except the contracts they belatedly signed when the petitioner's own contract of janitorial services with Robinsons neared expiration.

As already discussed, for an employee to be validly categorized as a project employee, **it is necessary that the specific project or undertaking had been identified and its period and completion date determined and made known to the employee at the time of his engagement.** This provision ensures that the employee is completely apprised of the terms of his hiring and the corresponding rights and obligations arising from his undertaking. Notably, the petitioner's service contract with Robinsons was from January 1

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26 *Rollo*, p. 366.

27 Department of Labor and Employment, Rules Implementing Articles 106-109 of the Labor Code as Amended.

28 Section 7, DO 18-02.

29 Section 8, DO 18-02.

to December 31, 2008. The respondents were only asked to sign their employment contracts for their deployment with Robinsons halfway through 2008, when the petitioner's service contract was about to expire.

We find the timing of the execution of the respondents' respective employment contracts to be indicative of the petitioner's calculated plan to evade the respondents' right to security of tenure, to ensure their easy dismissal as soon as the Robinsons' contract expired. The attendant circumstances cannot but raise doubts as to the petitioner's good faith.

If the petitioner really intended the respondents to be project employees, then the contracts should have been executed right from the time of hiring, or when the respondents were first assigned to Robinsons, not when the petitioner's service contract was winding up. The terms and conditions of the respondents' engagement should have been disclosed and explained to them from the commencement of their employment. The petitioner's failure to do so supports the conclusion that it had been in bad faith in evading the respondents' right to security of tenure.

In *Glory Philippines, Inc. v. Vergara*,[30] the Court rejected the validity of a fixed term contract belatedly executed, and ruled that its belated signing was a deliberate employer ploy to evade the employees' right to security of tenure. As the Court explained:

> To us, the private respondent's illegal intention became clearer from such acts. ***Its making the petitioners sign written employment contracts a few days before the purported end of their employment periods (as stated in such contracts) was a diaphanous ploy to set periods with a view for their possible severance from employment should the private respondent so willed it. If the term of the employment was truly determined at the beginning of the employment, why was there delay in the signing of the ready-made contracts that were entirely prepared by the employer?*** Also, the changes in the positions supposedly held by the petitioners in the company belied the private respondent's adamant contention that the petitioners were hired solely for the purpose of manning PIS during its alleged dry run period that ended on October 20, 1998. We view such situation as a very obvious ploy of the private respondent to evade the petitioner's eventual regularization.[31] [Emphasis ours]

Moreover, under Article 1390 of the Civil Code, contracts where the consent of a party was vitiated by *mistake, violence, intimidation, undue influence or fraud*, are voidable or annullable. The petitioner's threat of non-payment of the respondents' salaries clearly amounted to intimidation. Under this situation, and the suspect timing when these contracts were executed, we rule that these employment contracts were voidable and were effectively questioned when the respondents filed their illegal dismissal complaint.

The respondents were illegally

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30 557 Phil. 789 (2007).

31 Id. at 798-799.

dismissed.

To be valid, **an employee's dismissal must comply with the substantive and procedural requirements of due process**. Substantively, a dismissal should be supported by a just or authorized cause.[32] Procedurally, the employer must observe the twin notice and hearing requirements in carrying out an employee's dismissal.[33]

The petitioner argues that these substantive and procedural requisites do not apply to the respondents' case since they were employed under fixed term contracts. According to the petitioner, the respondents' employment contracts lapsed by operation of law as the necessary consequence of the termination and non-renewal of its service contract with Robinsons. Because of this, there was no illegal dismissal to speak of, only contract expiration.

We do not agree with the petitioner.

Having already determined that the respondents are regular employees and not project employees, and that the respondents' belated employment contracts could not be given any binding effect for being signed under duress, we hold that illegal dismissal took place when the petitioner failed to comply with the substantive and procedural due process requirements of the law.

The petitioner also asserts that the respondents' subsequent absorption by Robinsons' new contractors Fieldmen Janitorial Service Corporation and Altaserv negates their illegal dismissal. This reasoning is patently erroneous. The charge of illegal dismissal was made only against the petitioner which is a separate juridical entity from Robinsons' new contractors; it cannot escape liability by riding on the goodwill of others.

By law, the petitioner must bear the legal consequences of its violation of the respondents' right to security of tenure. The facts of this case show that since the respondents' hiring, they had been under the petitioner's employ as janitors, service crews and sanitation aides. **Their services had been continuously provided to the petitioner without any gap. Notably, the petitioner never refuted this allegation of the respondents. Further, there was no allegation that the petitioner went out of business after the non-renewal of the Robinsons' service contract.** Thus, had it not been for the respondents' dismissal, they would have been deployed to the petitioner's other existing clients.

In *D.M. Consunji, Inc. v. Jamin,*[34] an employee was dismissed after the expiration of the project he was last engaged in. After ruling that the respondent-employee was a regular and not a project employee, this Court affirmed the grant of backwages, computed from the time of the employee's illegal dismissal until his actual reinstatement. In these lights, we rule that the

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32 *Bughaw, Jr., v. Treasure Island Industrial Corporation,* 573 Phil. 435, 443 (2008).
33 Id.
34 G.R. No. 192514, April 18, 2012, 670 SCRA 235.

respondents are entitled to their full backwages, inclusive of their allowances and other benefits from the time of their dismissal up to their actual reinstatement.[35]

With regard to the award of separation pay, we agree with the CA's finding that this litigation resulted to strained relations between the petitioner and the respondents. Thus, we also affirm the CA's ruling that instead of reinstatement, the respondents should be paid their respective separation pays equivalent to one (1) month pay for every year of service.[36]

We cannot give credence to the petitioner's assertion that under Section 10 of DO 18-02,[37] the respondents are not entitled to separation pay because their employment was terminated due to the completion of the project where they had been engaged. This provision must be construed with the rest of DO 18-02's other provisions.

As earlier pointed out, Section 7 of DO 18-02 treats contractual employees as the independent contractor's regular employees for purposes of enforcing the Labor Code and other social legislation laws. Consequently, a finding of regular employment entitles them to the rights granted to regular employees, particularly the right to security of tenure and to separation pay.

Thus, a holistic reading of DO 18-02,[38] guides us to the conclusion that Section 10 only pertains to contractual employees who are really project employees. They are not entitled to separation pay since the end of the project for which they had been hired necessarily results to the termination of their employment. On the other hand, we already found that the respondents are the petitioner's regular employees. Thus, their illegal dismissal entitles them to backwages and reinstatement or separation pay, in case reinstatement is no longer feasible.

Solidary liability of the petitioner's officers

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35 Labor Code, Article 279.

36 *Rollo,* p. 71.

37 Section 10 provides:

> Section 10. Effect of Termination of Contractual Employment. In cases of termination of employment prior to the expiration of the contract between the principal and the contractor or subcontractor, the right of the contractual employee to separation pay or other related benefits shall be governed by the applicable laws and jurisprudence on termination of employment.
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> Where the termination results from the expiration of the contract between the principal and the contractor or subcontractor, or from the completion of the phase of the job, work or service for which the contractual employee is engaged, the latter shall not be entitled to separation pay. However, this shall be without prejudice to completion bonuses or other emoluments, including retirement pay as may be provided by law or in the contract between the principal and the contractor or subcontractor.

38 *Supra* note 29.

Finally, we modify the CA's ruling that Rana and Burgos, as the petitioner's president and general manager, should be held solidarily liable with the corporation for its monetary liabilities with the respondents.

A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that, **obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities**.[39]

A director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.[40]

In the present case, the respondents failed to show the existence of the first requisite. They did not specifically allege in their complaint that Rana and Burgos willfully and knowingly assented to the petitioner's patently unlawful act of forcing the respondents to sign the dubious employment contracts in exchange for their salaries. The respondents also failed to prove that Rana and Burgos had been guilty of gross negligence or bad faith in directing the affairs of the corporation.

To hold an officer personally liable for the debts of the corporation, and thus pierce the veil of corporate fiction, it is necessary to clearly and convincingly establish the bad faith or wrongdoing of such officer, since bad faith is never presumed.[41] Because the respondents were not able to clearly show the definite participation of Burgos and Rana in their illegal dismissal, we uphold the general rule that corporate officers are not personally liable for the money claims of the discharged employees, unless they acted with evident malice and bad faith in terminating their employment.[42]

WHEREFORE, in light of these considerations, we hereby **DENY** the petition. We **AFFIRM** with **MODIFICATION** the Court of Appeals' decision dated December 22, 2011 and resolution dated March 2, 2012 in CA-G.R. SP No. 120991, which also **AFFIRMED** the National Labor Relation Commission's decision dated April 28, 2011 and resolution dated June 16, 2011. Petitioners Fulgencio V. Rana and Monina R. Burgos are hereby

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39 *Santos v. National Labor Relations Commission,* 325 Phil. 145, 156 (1996).

40 *Francisco v. Mallen, Jr*, G.R. No. 173169, September 22, 2010, 631 SCRA 118, 123-124.

41 *Carag v. National Labor Relations Commission,* 548 Phil. 581, 602, (2007).

42 *Businessday Information Systems and Services, Inc. v. National Labor Relations Commission,* G.R. No. 103575, April 5, 1993, 221 SCRA 9, 14.

absolved from paying the respondents' monetary awards in their personal capacity. No costs.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
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. CARPIO
Associate Justice
Chairperson, Second Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice