



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PHIL-AIR CONDITIONING CENTER,
 Petitioner,

G.R. No. 193821

Present:

VELASCO,*
 BRION,** *Acting Chairperson,*
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

- versus -

Promulgated:

RCJ LINES and ROLANDO ABADILLA,
JR.,
 Respondents.

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Manila

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DECISION

BRION, J.:

Phil-Air Conditioning Center (*Phil-Air*) filed this petition for review on certiorari¹ to assail the September 15, 2010 decision² of the Court of Appeals (*CA*) in CA-G.R. CV No. 85866.

The *CA* affirmed the September 8, 2004 decision of the Regional Trial Court (*RTC*), Branch 119 of Pasay City, dismissing *Phil-Air*'s complaint for sum of money with prayer for a writ of preliminary attachment.³

* Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2282 dated November 13, 2015.

** Designated as Acting Chairperson in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2281 dated November 13, 2015.

¹ Rollo, pp. 9-26. The petition is filed under Rule 45 of the Rules of Court.

² Id. at 74-86. The assailed decision is penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinado E. Villon.

³ Civil Case No. 98-067, penned by Presiding Judge Pedro De Leon Gutierrez. Court of Appeals, id. at 22-40; *RTC* record, pp. 433-452.

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Antecedents

On various dates between March 5, 1990, and August 29, 1990, petitioner Phil-Air sold to respondent RCJ Lines four Carrier Paris 240 air-conditioning units for buses (*units*). The units included compressors, condensers, evaporators, switches, wiring, circuit boards, brackets, and fittings.⁴

The total purchases amounted to ₱1,240,000.00 as shown on a sales invoice dated November 5, 1990.⁵ RCJ Lines paid ₱400,000.00, leaving a balance of ₱840,000.00.⁶

RCJ Lines accepted the delivery of the units, which Phil-Air then installed after they were inspected by RCJ Lines president Rolando Abadilla, Sr.⁷

Phil-Air allegedly performed regular maintenance checks on the units pursuant to the one-year warranty on parts and labor. After some months from installation, Phil-Air supposedly boosted the capacity of the units by upgrading them to the Carrier Paris 280 model.⁸ It also purportedly repaired the control switch panel of one of the units for an additional cost of ₱60,000.00.⁹

RCJ Lines issued three post-dated checks in favor of Phil-Air to partly cover the unpaid balance:

<i>Check No.</i>	<i>Amount</i>	<i>Post-dated</i>
479759	Php 244,998.00	February 28, 1992
479760	Php 244,998.00	March 31, 1992
479761	Php 244,998.00	April 30, 1992
TOTAL	Php 734,994.00	

All the post-dated checks were dishonored when Phil-Air subsequently presented them for payment. Check No. 479759 was returned because it was drawn against insufficient funds, while Check Nos. 479760 and 479761 were returned because payments were stopped.¹⁰

Before presenting the third check for payment, Phil-Air sent a demand letter¹¹ to Rolando Abadilla, Sr. on April 7, 1992, asking him to fund the post-dated checks.

⁴ *Rollo*, pp. 11 and 75.

⁵ *Id.* at 30.

⁶ *Id.* at 11 and 75.

⁷ The complaint in the RTC was filed against RCJ Lines and Rolando Abadilla, Jr. Rolando Abadilla, Sr. died on June 13, 1996.

⁸ *Rollo*, p. 11. Phil-Air does not disclose when it allegedly upgraded the units.

⁹ *Id.* at 72. The repair was apparently made after the one-year warranty had lapsed.

¹⁰ *Id.* at 67-69.

¹¹ *Id.* at 70.

On July 17, 1996, Phil-Air demanded payment from Rolando Abadilla, Jr., for the total amount of ₱734,994.00 plus interest, and attorney's fees equivalent to 25% of the amount due. Phil-Air warned that it would take court action if payment is not made within five days from demand.¹²

In view of the failure of RCJ Lines to pay the balance despite demand, Phil-Air filed on April 1, 1998 the complaint¹³ for sum of money with prayer for the issuance of a writ of preliminary attachment.¹⁴ Phil-Air sought to recover from RCJ Lines:

- a) The total amount of ₱840,000.00 exclusive of interest for the unpaid delivered air-conditioning units;
- b) The amount of ₱60,000.00 for the unpaid repair services;
- c) The total interest in the amount of ₱756,000.00 (₱840,000.00 x 12% x 7 years + ₱60,000.00 x 12% x 7 years);
- d) The sum equivalent to 25% of the total amount due as attorney's fees, plus ₱3,000.00 per court appearance; and
- e) Costs of the suit.

In its answer with compulsory counterclaim,¹⁵ RCJ Lines admitted that it purchased the units in the total amount of ₱1,240,000.00 and that it had only paid ₱400,000.00. It refused to pay the balance because Phil-Air allegedly breached its warranty.¹⁶

RCJ Lines averred that the units did not sufficiently cool the buses despite repeated repairs. Phil-Air purportedly represented that the units were in accord with RCJ Lines' cooling requirements as shown in Phil-Air's price quotation¹⁷ dated August 4, 1989. The price quotation provided that full payment should be made upon the units' complete installation. Complete installation, according to RCJ Lines, is equivalent to being in operational condition.

As it turned out, the Carrier Paris 240 model was not suited to the 45 to 49-seater buses operated by RCJ Lines. The units, according to RCJ Lines, were defective and did not attain full operational condition.¹⁸

¹² Id. at 71.

¹³ RTC Record, pp. 1-7.

¹⁴ *Rollo*, p. 13. Phil-Air allegedly also filed a criminal case against Rolando Abadilla, Sr. but the case was dismissed due to prescription.

¹⁵ Id. at 76.

¹⁶ Id. at 189-193.

¹⁷ RTC Record, pp. 109-110.

¹⁸ *Rollo*, p. 77.

Further, RCJ Lines claimed that it was also entitled to be reimbursed for costs and damages occasioned by the enforcement of the writ of attachment.

RCJ Lines thus urged the RTC to order Phil-Air to pay (1) the replacement costs of the units; (2) lost profits for nine days from April 22 to April 30, 1999, resulting from the attachment of its two buses amounting to ₱207,000.00;¹⁹ and (3) ₱64,390.00 for the counter-bond premium, moral damages, exemplary damages and attorney's fees.

The RTC Ruling

The RTC granted the application for the issuance of a writ of preliminary attachment after Phil-Air posted an attachment bond in the amount of ₱1,656,000.00.²⁰ Two buses of RCJ Lines were attached pursuant to the writ dated December 18, 1998.²¹ The writ was executed on April 21, 1999.²² The attachment, however, was later lifted when the RTC granted RCJ Lines' urgent motion to discharge the writ of attachment.²³ RCJ Lines posted a counter-bond in the same amount as the attachment bond.²⁴

Ruling on the merits after trial, the RTC found that Phil-Air was guilty of laches and estopped from pursuing its claim. It also sustained the allegation that Phil-Air had breached its warranty.

The dispositive portion of the RTC judgment reads:

WHEREFORE, judgment is hereby rendered as follows:

- A. Dismissing the complaint of plaintiff for lack of merit.
- B. Directing the plaintiff to pay the defendants the amount of P100,000.00 as attorney's fees as they were forced to spend and hire a lawyer to litigate for seven (7) years in this Court the unfounded and invalid cause of action of plaintiff.
- C. Directing the plaintiff to pay P82,274.00 as refund of the premium xxx for defendant's counter-bond for the release of the two buses which were attached per Writ of Attachment of this Court.
- D. Directing the plaintiff to pay P216,000.00 for the lost profits of defendants for the attachment of their two buses as there was no fraud in the transaction of the parties and plaintiff had no sufficient cause of action for the issuance of the writ of attachment.

¹⁹ Id. at 85.

²⁰ CA *rollo*, p. 22 and RTC record, p. 21.

²¹ RTC record, p. 44.

²² Id. at 49.

²³ *Rollo*, pp. 76-78. The writ of attachment was dated December 18, 1998 while the motion to discharge attachment was dated April 14, 1999.

²⁴ CA *rollo*, p. 23 and RTC record, p. 62.

- E. Dismissing all other claims of defendants as stated in their counter-claims.
- F. Costs against plaintiff.

SO ORDERED.²⁵

The CA Ruling

The CA affirmed the RTC decision *in toto*.²⁶

First, the CA held that Phil-Air's cause of action was barred by laches.²⁷

The CA concluded that "Phil-Air's inaction on RCJ Lines' repeated demands and inexplicable failure to comply with its obligations had certainly led the latter to believe [Phil-Air] was no longer interested in pursuing any claim" and that "[Phil-Air] had been conspicuously silent for so long a time which is disturbingly unusual for one claiming to have been aggrieved by another."²⁸

Second, the CA held that Phil-Air breached its warranty. The price quotation supposedly warranted that the Carrier Paris 240 model was suitable for 50-60-passenger coaches and especially recommended for operation in the tropics.²⁹

The CA gave credence to the testimony of the country manager of Carrier Refrigeration Philippines Inc. (*Carrier Philippines*) who testified that the Carrier Paris 240 model is suited for buses with a maximum seating capacity of up to 35 persons; beyond that, the units would not function properly.³⁰ The CA also found convincing the testimonies of two RCJ Lines employees who testified that they experienced firsthand the inefficient cooling of the Carrier Paris 240.³¹

Relying on these testimonies, the CA found that the four units did not meet the cooling requirements of RCJ Lines.³²

Third, the CA ordered Phil-Air to reimburse the premium on the counter-bond amounting to ₱82,274.00 since the writ was improvidently issued.

²⁵ *Rollo*, pp. 14 and 74.

²⁶ *Id.* at 86. The dispositive portion of the CA decision reads:
"ACCORDINGLY, the appeal is **DISMISSED** for lack of merit. Costs against the appellant."

²⁷ *Id.* at 80.

²⁸ *Id.* at 81.

²⁹ *Id.* at 81-82.

³⁰ *Id.* at 82.

³¹ *Id.* at 83.

³² *Id.* at 82-84.

Fourth, the CA affirmed the finding of the RTC that RCJ Lines suffered losses when the RTC attached two of its buses.

The RTC and the CA relied on the testimony of Rolando Abadilla, Jr., who claimed to be in charge of the daily operations of RCJ Lines. He testified that they suffered losses for nine days as a result of the enforcement of the writ of preliminary attachment. The lost profits purportedly amounted to ₱227,280.00. To support this claim, RCJ Lines adduced as evidence the summary of the daily cash collections³³ from the buses that were not attached, on various dates in August and September 2000.³⁴

Finally, the CA sustained the award of attorney's fees for ₱100,000.00 in favor of RCJ lines for having been compelled to litigate.

The Petition

First, Phil-Air argues that the doctrine of laches is not applicable when the action is filed within the prescriptive period. Laches, being a doctrine of equity, should only be applied to fill a void in the law.³⁵

Phil-Air asserts that it filed the complaint on April 1, 1998, or less than eight years from the execution of the sales invoice dated November 5, 1990. The complaint was thus filed within the ten-year prescriptive period for actions based upon a written contract.

Second, Phil-Air denies that it breached its warranty.

It maintains that all the units were brand new and were accepted by RCJ Lines in good, working, and operational condition. The units were inspected, tested, and approved by then RCJ Lines president, Rolando Abadilla, Sr., as proved by the delivery receipts in which he affixed his signature.³⁶

Phil-Air further avers that it was not notified of the alleged breach of warranty. Assuming it breached its warranty, Phil-Air submits that the action to enforce the warranty had already prescribed.

Third, Phil-Air rejects the CA's order that it must reimburse the premium payment for the counter-bond and the alleged losses suffered by RCJ Lines. The attachment bond should be answerable for damages, if any.

³³ RTC record, pp. 362-380.

³⁴ Id. at 85.

³⁵ Id. at 16.

³⁶ Id. at 30-72.

Respondent's Comment

RCJ Lines reiterates all the arguments it raised in its counterclaim. It admits that it did not pay the balance of the purchase price.³⁷ It maintains, however, that it was justified in doing so because Phil-Air breached its warranty. It insists that Phil-Air was guilty of laches because it waited for eight years to file the collection case.³⁸

Issues

Based on the foregoing, the Court resolves the following issues:

- (1) Whether the claim of Phil-Air was barred by laches;
- (2) Whether Phil-Air should reimburse RCJ Lines for the counter-bond premium and its alleged unrealized profits;
- (3) Whether RCJ Lines proved its alleged unrealized profits arising from the enforcement of the preliminary writ of attachment; and
- (4) Whether RCJ Lines proved that Phil-Air breached its warranty.

Our Ruling

We grant the petition.

Phil-Air's claim is not barred by laches.

In general, there is no room to apply the concept of laches when the law provides the period within which to enforce a claim or file an action in court. Phil-Air's complaint for sum of money is based on a written contract of sale. The ten-year prescriptive period under Article 1144 of the Civil Code thus applies.³⁹

In the present case, both parties admit the existence and validity of the contract of sale. They recognize that the *price quotation* dated August 4, 1989, contained the terms and conditions of the sale contract. They also agree that the price and description of the units were indicated on the *sales*

³⁷ Id. at 89.

³⁸ Id. at 189-193. RCJ Lines argue: "[Phil-Air] could have instituted an action for non-payment when the...balance was not paid instead of waiting for eight (8) years to file its collection case. Respondents, by this was [sic] made to feel secure in the belief that no action would be filed against them by such passivity..."

³⁹ Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment. (n)

invoice dated November 5, 1990. The sales were in fact consummated on various dates between March 5, 1990 and August 29, 1990, as proved by several *delivery receipts*.

The Court therefore can resolve whether Phil-Air's action to enforce the contract was timely filed even in the apparent absence of a formal or notarized deed of sale.⁴⁰ More significantly, Rolando Abadilla, Jr., admitted under oath that the sale was in writing.⁴¹

We note that Phil-Air filed the complaint with the RTC on April 1, 1998. Counting from the date of the sales invoice, or from the date of the delivery receipts, or even from the date of the price quotation, it is clear that the complaint was filed within the ten-year prescriptive period. Contrary to the CA's ruling, laches does not apply.

Laches is defined as the failure or neglect for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.⁴²

While the CA correctly held that prescription and estoppel by laches are two different concepts, it failed to appreciate the marked distinctions between the two concepts.

On the one hand, the question of laches is addressed to the sound discretion of the court.⁴³ The court resolves whether the claimant asserted its claim **within a reasonable time** and whether its failure to do so warrants the presumption that it either has abandoned it or declined to assert it. The court determines the claimant's intent to assert its claim based on its past actions or lack of action. After all, what is invoked in instances where a party raises laches as a defense is the equity jurisdiction of the court.⁴⁴

On the other hand, if the law gives the period within which to enforce a claim or file an action in court, the court confirms whether the claim is asserted or the action is filed in court **within the prescriptive period**. The court determines the claimant's intent to assert its claim by simply measuring the time elapsed from the proper reckoning point (e.g., the date of the written contract) to the filing of the action or assertion of the claim.

In sum, where the law provides the period within which to assert a claim or file an action in court, **the assertion of the claim or the filing of**

⁴⁰ See *Asian Construction and Development Corp. v. Cathay Pacific Steel Corporation*, 636 Phil. 127 (2010) and *Mackay v. Spouses Caswell*, G.R. No. 183872, November 17, 2014, where the Court allowed the enforcement of claims based on sales invoices.

⁴¹ CA rollo, p. 25.

⁴² *Municipality of Carcar v. CFI of Cebu*, 204 Phil. 719,723 (1982) cited in *Metrobank v. Centro Development Corp.* G.R. No. 180974, June 13, 2012, 672 SCRA 325.

⁴³ See *Jimenez v. Fernandez*, 263 Phil. 72, 81 (1990).

⁴⁴ *Agra, et al. v. Philippine National Bank*, 368 Phil. 829, 833 (1999).

the action in court at any time within the prescriptive period is generally deemed reasonable, and thus, does not call for the application of laches. As we held in one case, *unless reasons of inequitable proportions are adduced*, any imputed delay within the prescriptive period is not delay in law that would bar relief.⁴⁵

In *Agra, et al. v. Philippine National Bank*,⁴⁶ we held that “[l]aches is a **recourse in equity** [and] is applied only in the absence, never in contravention, of statutory law. Thus, laches cannot, **as a rule**, abate a collection suit filed within the prescriptive period mandated by the Civil Code.”

Agra involved an action for collection of a sum of money arising from an unpaid loan. In resisting payment, the sureties invoked laches and maintained that the creditor-bank with full knowledge of the deteriorating financial condition of the principal debtor did not take steps to collect from the latter while still solvent. The sureties thus argued that the creditor-bank’s action was barred by laches.

We found that the sureties failed to prove all the elements of laches, namely:

- (1) conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy;
- (2) delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit;
- (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his claim; and
- (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.⁴⁷

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at 843 citing *Catholic Bishop of Balanga v. CA*, G.R. No. 112519, November 14, 1996, 264 SCRA 181, 183, per Hermosisima Jr., J.; *Go Chi Gun, et al. v. Co Cho, et al.*, 96 Phil. 622, 623 (1955); *Mejia de Lucas v. Gamponia*, 100 Phil. 277, 280-281, (1956); *Z.E. Lotho, Inc. v. Ice & Cold Storage Industries, Inc.*, G.R. No. L-16563, December 28, 1961, 3 SCRA 744-745; *Abraham v. Recto-Kasten*, G.R. No. L-16741, January 31, 1962, 4 SCRA 298; *Custodio v. Casiano*, G.R. No. L-18977, December 27, 1963, 9 SCRA 841; *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*, G.R. No. L-21601, December 17, 1966, 18 SCRA 1040; *Miguel v. Catalino*, G.R. No. L-23022, November 29, 1968, 26 SCRA 234; *Yusingco v. Ong Hing Lian*, G.R. No. L-26523, December 24, 1971, 42 SCRA 589; *Perez v. Ong Chua*, G.R. No., 116732, September 23, 1982, 116 SCRA 732; *Rafols v. Barba*, G.R. No. L-28446, December 13, 1982, 119 SCRA 146, 148; *Chung Ka Bio v. Intermediate Appellate Court*, 246 Phil. 556 (1988); *Claverias v. Quingco*, G.R. No. 77744, March 6, 1992, 207 SCRA 66, 83; *Buenaventura v. Court of Appeals*, G.R. No. L-50837, December 28, 1992, 216 SCRA 818, 824.

Examining these elements, we found that only the first element was present. There was no delay (*second element*) because the creditor-bank filed the action within the ten-year prescriptive period. Since the claim was timely filed, the defendants did not lack notice that the creditor-bank would assert its claim (*third element*). Nor was the assertion of the right deemed injurious to the defendants (*fourth element*); the creditor-bank could assert its claim at *any time* within the prescriptive period.

The same conclusion holds true in the present case; not all the elements of laches are present. To repeat, Phil-Air filed the complaint with the RTC on April 1, 1998. The time elapsed from August 4, 1989 (the date of the price quotation, which is the earliest possible reckoning point), is eight years and eight months, well within the ten-year prescriptive period. There was simply no delay (*second element of laches*) where Phil-Air can be said to have negligently slept on its rights.

More significantly, there is no basis for laches as the facts of the present case do not give rise to an inequitable situation that calls for the application of equity and the principle of laches.⁴⁸

***Phil-Air is not directly liable
for the counter-bond premium
and RCJ Lines' alleged
unrealized profits.***

The CA and the RTC erred when it held Phil-Air directly liable for the counter-bond premium and RCJ Lines' alleged unrealized profits. Granting that RCJ Lines suffered losses, the judgment award should have been first executed on the attachment bond. Only if the attachment bond is insufficient to cover the judgment award can Phil-Air be held liable.⁴⁹

We explain below the purpose of a preliminary attachment, the procedure in obtaining it, and the manner of having it lifted.

A writ of preliminary attachment is a provisional remedy issued by the court where an action is pending to be levied upon the property or properties of the defendant. The property is held by the sheriff as security for the satisfaction of whatever judgment that might be secured by the attaching party against the defendant.⁵⁰

The grant of the writ is conditioned not only on the finding of the court that there exists a valid ground for its issuance.⁵¹ The Rules also require the applicant to post a bond.

⁴⁸ *Supra* note 44, at 844 citing *Chavez v. Bonto-Perez*, G.R. No.109808, March 1, 1995, 242 SCRA 81.

⁴⁹ Section 20 (last paragraph), Rule 57, RULES OF CIVIL PROCEDURE.

⁵⁰ *See Torres v. Satsatin*, G.R. No. 166759, November 25, 2009, 605 SCRA 453, citing *Cuartero v. Court of Appeals*, G.R. No. 102448, August 5, 1992, 212 SCRA 260.

⁵¹ RULE 57. Preliminary Attachment.

Section 1. *Grounds upon which attachment may issue.*

Section 4 of Rule 57 of the Rules of Civil Procedure (*Rules*) provides that “the party applying for the order must...give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, **conditioned that the latter will pay all the costs that may be adjudged to the adverse party and all damages that he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.**”

The enforcement of the writ notwithstanding, the party whose property is attached is afforded relief to have the attachment lifted.

There are various modes of discharging an attachment under Rule 57, *viz.*: (1) by depositing cash or posting a counter-bond under Section 12,⁵² (2) by proving that the attachment bond was improperly or irregularly issued or enforced, or that the bond is insufficient under Section 13;⁵³ (3) by

At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines which intent to defraud his creditors;
- (b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker agent, or clerk, in the course of his employment as such, or by other person in a fiduciary capacity, or for a willful violation of duty;
- (c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;
- (d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or
- (f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

⁵² Sec. 12. *Discharge of attachment upon giving counter-bond.*

After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason to be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

⁵³ Sec. 13. *Discharge of attachment on other grounds.*

The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached

showing that the attachment is excessive under Section 13; and (4) by claiming that the property is exempt from execution under Section 2.⁵⁴

RCJ Lines availed of the first mode by posting a counter-bond.

Under the first mode, the court will order the discharge of the attachment after (1) the movant makes a cash deposit or posts a counter-bond and (2) the court hears the motion to discharge the attachment with due notice to the adverse party.⁵⁵

The amount of the cash deposit or counter-bond must be equal to that fixed by the court in the order of attachment, exclusive of costs. The cash deposit or counter-bond shall secure the payment of any judgment that the attaching party may recover in the action.⁵⁶

The filing of a counter-bond to discharge the attachment applies when there has already been a seizure of property by the sheriff and all that is entailed is the presentation of a motion to the proper court, seeking approval of a cash or surety bond in an amount equivalent to the value of the property seized and the lifting of the attachment on the basis thereof. **The counter-bond stands in place of the property so released.**⁵⁷

To be clear, the discharge of the attachment by depositing cash or posting a counter-bond under Section 12 should not be confused with the discharge sanctioned under Section 13. Section 13 speaks of discharge on the ground that the writ was improperly or irregularly issued or enforced, or that the attachment bond is insufficient, or that the attachment is excessive.

To reiterate, the discharge under Section 12 takes effect upon posting of a counter-bond or depositing cash, and after hearing to determine the sufficiency of the cash deposit or counter-bond. On the other hand, the discharge under Section 13 takes effect only upon showing that the plaintiff's attachment bond was improperly or irregularly issued, or that the bond is insufficient. The discharge of the attachment under Section 13 must be made only after hearing.⁵⁸

property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

⁵⁴ WILLARD B. RIANO, CIVIL PROCEDURE - A Restatement for the Bar (2007), p. 456.

⁵⁵ SECTION 12, RULE 57, RULES OF CIVIL PROCEDURE, *See K.O. Glass v. Valenzuela*, 202 Phil. 141, 143 (1985), *Belisle Investment & Finance Co., Inc. v. State Investment House, Inc.*, 235 Phil. 633, 634 (1987), cited in Herrera, *Remedial Law, Vol. III* (2006), p. 41.

⁵⁶ SECTION 12, RULE 57, RULES OF CIVIL PROCEDURE.

⁵⁷ Justice Narvasa, writing his separate opinion in *Mindanao Savings and Loans Association, Inc. v. Court of Appeals*, 254 PHIL. 480, 485-488 (1989).

⁵⁸ *Peroxide Philippines Corporation v. Court of Appeals*, 276 Phil. 980 (1991).

These differences notwithstanding, the discharge of the preliminary attachment either through Section 12 or Section 13 has no effect on and does not discharge the attachment bond. **The dissolution of the preliminary attachment does not result in the dissolution of the attachment bond.** Justice Narvasa, writing his separate opinion in one case, explained:

The dissolution of the preliminary attachment upon security given [Section 12], or a showing of its irregular or improper issuance [Section 13], does not of course operate to discharge the sureties on plaintiff's own attachment bond. The reason is simple. That bond is executed to the adverse party, . . . conditioned that the . . . (applicant) will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto." Hence, until that determination is made, as to the applicant's entitlement to the attachment, his **bond must stand and cannot be withdrawn.**⁵⁹ [emphasis and underscoring supplied, citations omitted]

In the present case, the RTC lifted the preliminary attachment after it heard RCJ Lines' urgent motion to discharge attachment and the latter posted a counter-bond. The RTC found that there was no fraud and Phil-Air had no sufficient cause of action for the issuance of the writ of the attachment. As a consequence, it ordered Phil-Air to refund the premium payment for the counter-bond and the losses suffered by RCJ Lines resulting from the enforcement of the writ. The CA affirmed the RTC ruling *in toto*.

We reverse the CA and RTC rulings.

As discussed above, it is patent that under the Rules, the attachment bond answers for all damages incurred by the party against whom the attachment was issued.⁶⁰

Thus, Phil-Air cannot be held directly liable for the costs adjudged to and the damages sustained by RCJ Lines because of the attachment. Section 4 of Rule 57 positively lays down the rule that the attachment bond will pay **"all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto."**

The RTC, instead of declaring Phil-Air liable for the alleged unrealized profits and counter-bond premium, should have ordered the execution of the judgment award on the attachment bond. To impose direct liability to Phil-Air would defeat the purpose of the attachment bond, which was not dissolved despite the lifting of the writ of preliminary attachment.

The order to refund the counter-bond premium is likewise erroneous. The premium payment may be deemed a cost incurred by RCJ Lines to lift the attachment. Such cost may be charged against the attachment bond.

⁵⁹ Id.

⁶⁰ See *Carlos v. Sandoval*, 508 Phil. 260, 263 (2005).

RCJ Lines failed to prove its alleged unrealized profits.

In finding that RCJ Lines suffered damages because of the attachment, the RTC and the CA gave complete credence to the testimony of Rolando Abadilla, Jr. He claimed that RCJ Lines lost ₱216,000.00 in unrealized profits for nine days when the buses were wrongfully seized.

To arrive at this amount, RCJ Lines alleged that a bus travelling from Manila to Ilocos and vice versa earned an average daily income of ₱12,000.00. To back this claim, RCJ Lines prepared a summary of the daily cash collections of its nine buses on certain days of August and September 2000.

The summary of daily cash collections apparently prepared by one RCJ Lines employee was in turn based on the reports of the dispatchers indicating the number of passengers and the amount of fare collected on a particular trip. Except for one bus which travelled round-trip on August 22-23, 2000, the daily cash collections all pertained to the round-trip of eight buses on September 2-3, 2000.

These documents are insufficient to prove actual damages.

In *Spouses Yu v. Ngo Yet Te*,⁶¹ we held that if the claim for actual damages covers unrealized profits, the amount of unrealized profits must be established and supported by independent evidence of the mean income of the business undertaking interrupted by the illegal seizure.

We explained in *Spouses Yu* that to merit an award of actual damages arising from a wrongful attachment, the attachment defendant must prove, with the best evidence obtainable, the fact of loss or injury suffered and the amount thereof. Such loss or injury must be of the kind which is not only capable of proof but must actually be proved with a reasonable degree of certainty. As to its amount, the same must be measurable based on specific facts, and not on guesswork or speculation.⁶²

Spouses Yu is on all fours with the present dispute because it also involved a claim for actual damages arising from the illegal attachment of the claimant's properties, one of which was a passenger bus.

The claimants in that case attempted to prove actual damages by computing the daily average income of its bus operation based on the value of three ticket stubs sold over five separate days. The claimants likewise cited unused ticket stubs as proof of income foregone when the bus was wrongfully seized.

⁶¹ 543 Phil. 389, 400 (2007), citing *Public Estates Authority v. Chu*, G.R. No. 145291, September 21, 2005, 470 SCRA 495, 503 and *Villafuerte v. Court of Appeals*, G.R. No. 134239, May 26, 2005, 459 SCRA 58, 59.

⁶² Id. Citations omitted.

We found the claimant's evidence insufficient to prove actual damages. While we recognized that they suffered some damages, we held that "[b]y no stretch of the imagination can we consider ticket sales for five days sufficient evidence of the average daily income of the passenger bus, much less its mean income. Not even the un rebutted testimony of [the claimant] can add credence to such evidence for the testimony itself lacks corroboration."⁶³

Similarly, the evidence adduced by RCJ Lines to show actual damages fell short of the required proof. Its average daily income cannot be derived from the summary of daily cash collections from only two separate occasions, *i.e.*, August 22-23 and September 2-3, 2000. The data submitted is too meager and insignificant to conclude that the buses were indeed earning an average daily income of ₱12,000.00.

More significant, the person who prepared the unsigned summary of daily cash collections was not presented before the RTC to verify and explain how she arrived at the computation. The dispatchers who prepared the collection reports were likewise not presented; some of the reports were also unsigned. While the summary was approved by Rolando Abadilla, Jr., his testimony on the alleged unrealized profits was uncorroborated and self-serving.

Nonetheless, we recognize that RCJ Lines suffered some form of pecuniary loss when two of its buses were wrongfully seized, although the amount cannot be determined with certainty.

We note that in its prayer for the issuance of the writ of preliminary attachment, Phil-Air alleged that RCJ Lines was guilty of fraud in entering into the sale transaction. A perusal of the record, however, would show that Phil-Air failed to prove this bare assertion. This justifies an award of temperate or moderate damages in the amount of Php 50,000.00.⁶⁴

The allegation of breach of express warranty was not proved.

We are not convinced that Phil-Air breached its express warranty. RCJ Lines had no right to recoupment in diminution of the price.⁶⁵

⁶³ Id. at 402.

⁶⁴ Id. at 403.

⁶⁵ Article 1599 (1), CIVIL CODE, provides:

Art. 1599. Where there is a breach of warranty by the seller, the buyer may, at his election:

(1) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

The Civil Code defines an express warranty as any affirmation of fact or any promise by the seller relating to the thing if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon.⁶⁶

The question whether there was a breach of warranty is factual. Consequently, the Court should rely on the factual findings of the CA and RTC, which are *generally* deemed binding and conclusive to the Court. More so in a Rule 45 petition where only questions of law can be raised. Further, factual findings of the RTC, when affirmed by the CA, are conclusive on the Court when supported by the evidence on record.⁶⁷

The evidence on record does not support the findings of the CA and RTC.

We emphasize that there are recognized cases where the Court can disregard the factual findings of the RTC and CA. In these cases, the Court draws its own conclusion based on the evidence on record.⁶⁸

In this case, Phil-Air denies that it breached its express warranty and strongly argues that the CA and RTC completely ignored its evidence while it sustained the bare allegations of Rolando Abadilla, Jr.

We agree with Phil-Air. Our examination of the record reveals that the RTC and CA manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion.

To prove that Phil-Air breached its express warranty, RCJ Lines presented the following testimonial and documentary evidence:

⁶⁶ Art. 1546, CIVIL CODE. -

Any affirmation of fact or any promise by the seller relating to the thing is an express warranty. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer.

⁶⁷ *First United Constructors Corporation v. Bayanihan Automotive Corporation*, G.R. No. 164985, January 15, 2014, 713 SCRA 354, citing *Dimaranan v. Heirs of Spouses Hermogenes Arayata and Flaviana Arayata*, G.R. No. 184193, March 29, 2010, 617 SCRA 101.

⁶⁸ The exceptions to the general rule that the findings of facts of the RTC and the CA are deemed conclusive and binding to this Court are the following: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *See Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, 528 Phil. 724, 735 (2006).

- 1) Rolando Abadilla, Jr. who claimed that their employees reported the defect of the units to him and to his late father. His late father allegedly demanded Phil-Air to repair the defects. But despite repeated *verbal* demands, Phil-Air purportedly failed to comply with its one-year warranty on parts and labor.
- 2) Two RCJ Lines employees who claimed that they experienced firsthand the inefficient cooling of the units.
- 3) The general manager of Carrier Philippines who testified that the Carrier 240 model was not suitable for buses with a capacity of more than 35 passengers, like those operated by RCJ Lines.
- 4) Summary of expenses, sales invoices, provisional receipts, and statements of accounts issued by other suppliers and shops (Car Cool Philippines, Inc. and Sta. Rosa Motor Works, Inc.) engaged by RCJ Lines *during the period of warranty* to repair the defective units, amounting to ₱208,132.00.
- 5) Commercial invoice for the \$68,780.00 US Dollars worth of new units bought from another supplier *after the lapse of warranty* to replace the units supplied by Phil-Air.⁶⁹

In defense, Phil-Air claimed that it regularly checked the units and that during the effectivity of the one-year warranty, RCJ Lines never once complained of defects; if there were defects, the latter should have demanded Phil-Air to perform its warranty in writing; the reason it had no proof it made repairs and delivered spare parts was precisely because it was not apprised of any defect; and that the testimonies of the RCJ Lines witnesses were self-serving.⁷⁰

The RTC noted that Phil-Air did not present evidence to rebut the allegation of breach.⁷¹ Phil-Air instead opposed the admission of the documentary evidence of RCJ Lines for failing to comply with the best evidence rule.⁷²

We hold that the evidence that RCJ Lines submitted failed to prove breach of express warranty.

As to the testimonial evidence

The testimonies of the RCJ Lines witnesses were self-serving and uncorroborated.

⁶⁹ RTC-TSN dated August 9, 2001, p. 581.

⁷⁰ *Rollo*, pp. 15-25.

⁷¹ RTC Record, p. 412.

⁷² *Id.* at 538-542.

The claim of Rolando Abadilla, Jr. that his late father verbally communicated the defects of the units to Phil-Air was hearsay and not admissible.⁷³ He admitted that he was not around when his father phoned Phil-Air to demand the repair of the units. He likewise admitted that they did not attempt to personally meet with nor send a letter to Phil-Air to demand the repairs.⁷⁴

More tellingly, Rolando Abadilla, Jr. admitted that they issued the post-dated checks to Phil-Air to cover the balance of the purchase price sometime in 1992, *viz* –

Q. Mr. Witness is it not in this case that you personally issued three (3) checks draws against the name Rolando Abadilla and Susan or Rolando Abadilla, and this was some time in 1992?

A. Yes, Sir.

Q. And you confirm that these were all dated March 31, April 30 and February 29, 1992?

A. Yes, Sir.

Q. Despite your claim that these air-conditioning units were defective and despite your claim that these air-conditioning units were not repaired by plaintiff, hence you referred them for repair to other companies who are not authorized, do you still affirm the fact that you issued the postdated checks, **the total of which is exactly the balance of the purchase price as quoted in the price quotation**, yes or no? [emphasis supplied]

A. Yes, Sir.⁷⁵

xxx

We note that the alleged repairs made by Car Cool Philippines, Inc. and Sta. Rosa Motor Works, Inc. started in 1991.⁷⁶ If RCJ Lines knew as early as 1991 that the units were defective and that Phil-Air refused to perform its warranty despite repeated demands, we wonder why RCJ Lines still issued the post-dated checks in 1992 to cover the balance of the purchase price.

The record also reveals that Car Cool Philippines, Inc. and Sta. Rosa Motor Works, Inc. were not authorized by the Carrier brand to repair the units, a fact not denied by Rolando Abadilla, Jr.⁷⁷ It was likewise established that some of the parts/items purportedly provided by the other suppliers were expressly excluded from the list of parts/items that Phil-Air was supposed to supply, again, a fact admitted by Rolando Abadilla, Jr.⁷⁸ It

⁷³ Section 36 of Rule 130, REVISED RULES ON EVIDENCE.

⁷⁴ RTC-TSN dated August 9, 2001, pp. 560-586.

⁷⁵ Id. at 576.

⁷⁶ RTC record, pp. 346-360. RCJ Lines admitted that the units were installed sometime in January 1991. Thus, the one-year warranty.

⁷⁷ RTC-TSN dated August 9, 2001, p. 573.

⁷⁸ Id. at 575.

was likewise unclear that the repairs made by the other service providers were done on the same buses on which the subject units were installed.⁷⁹

We also find glaring the fact that RCJ Lines did not respond to the April 7, 1992 demand letter sent by Phil-Air, *viz.* –

Dear Mr. Abadilla,

I have been trying to get in touch with you and Junjun the past several weeks but have been unsuccessful xxx The two checks that you used to partly pay for the four units bus air conditions [sic] were all dishonored by the bank [because they were drawn against insufficient funds].

We are but a small company and our cash flow was adversely affected by the return of the checks. xxx It would mean so much if you could somehow help us replenished these checks. xxx We look forward to hearing from you Respectfully, we remain.

Yours truly,
Ricardo Cokieng

If RCJ Lines was aware all along that the units were defective and that Phil-Air refused to heed its *verbal* demands to make repairs, we do not understand why it ignored Phil-Air's *written* demand to replenish the returned checks. We also find it unthinkable that RCJ Lines would spend for parts and services from other suppliers and providers, *during the period of warranty*, without demanding first in writing that Phil-Air make good its express warranty.

In this regard, we note that the right of the buyer to the recoupment in the diminution of the price under Article 1599 (1) should be read together with Article 1586 of the Civil Code,⁸⁰ which provides that:

Art. 1586. In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract of sale. But, **if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach in any promise of warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor.**

The obvious purpose of the notice is to protect the seller against belated claims. If the seller is not duly notified, he is prevented from making prompt investigation to determine the cause and extent of his liability.⁸¹ Consequently, he is barred from repairing or rectifying whatever defects the goods sold had.

⁷⁹ Id. at 574. It was only shown that the buses had the same plate numbers but not the same motor or chassis number.

⁸⁰ De Leon, *Comments and Cases on Sales and Lease*, p. 377 (2005).

⁸¹ Id. at 350.

RCJ Lines failed to convince us that it notified Phil-Air of the breach of warranty within a reasonable time. In truth, we are not convinced at all that it had even notified Phil-Air. Although Article 1586 does not require that the notice to the seller be in writing, we cannot accept the claim of Rolando Abadilla, Jr. that his late father verbally notified Phil-Air of the defects, without violating the rule on hearsay.

Also, the testimonies of the two RCJ Lines employees that they experienced firsthand the insufficient cooling of the units were self-serving and uncorroborated by a disinterested party.

Further, the reliance of the CA and the RTC on the testimony⁸² of the general manager of Carrier Philippines was misplaced and unwarranted. It appears that the computation of the cooling efficiency of the Carrier 240 model was merely theoretical, based only on the specifications of the model and not on actual test, *viz.* –

Q: Have you seen RCJ Bus?

A: I did see.

xxx

Q: With respect to car aircon Paris 240 installed, have you seen this bus?

A: No, I did not.

Q: Mr. Witness, this case involves a particular product a brand of the product that you did not try [sic] but specifically Paris 240. Have you seen it personally, the four units installed?

A: No I did not.

Q: Even one unit?

A: No Sir.

The meat of his testimony centered not on the subject units but on the cooling capacity of the product that Carrier Philippines was then selling in the market. In fact, he admitted that his role in the company had nothing to do with repairs of air-conditioning units.

On this basis, we do not find his testimony conclusive as to the alleged breach of express warranty. It was too tangential and speculative. We note that he was not even presented as an expert witness. Even if we assume that the computation of the cooling capacity of the Carrier 240 was accurate, RCJ Lines still failed to prove that it duly and promptly informed Phil-Air of the alleged breach.

⁸² RTC-TSN dated March 6, 2003, pp. 638-656.

On the documentary evidence

The pieces of documentary evidence submitted by RCJ Lines to prove breach of express warranty failed to comply with the *best evidence rule*. It is established on record that the sales invoices and provisional receipts issued by the *other* suppliers and service providers were mere photocopies.⁸³ The counsel of Phil-Air objected to the admission of the secondary evidence without proof that the originals were indeed lost. The counsel for RCJ Lines requested that the evidence be conditionally accepted and marked, which the trial court granted.

Nowhere on record, however, was it ever established that the originals were later submitted. It was also not shown that the originals were indeed lost, which could have justified the submission of secondary evidence.⁸⁴ The RTC simply ignored this fact when it finally decided the case.

Conclusion

Based on the foregoing analysis, we find that RCJ Lines failed to prove its allegation that Phil-Air breached its express warranty. RCJ Lines is thus held liable to pay the balance of the purchase price plus interest and attorney's fees.⁸⁵ RCJ Lines, however, is entitled to temperate damages as a result of the wrongful attachment of its buses and to the refund of the premium payment for the counter-bond.

WHEREFORE, in view of the foregoing, we hereby GRANT the petition. The September 15, 2010 decision of the Court of Appeals in CA-G.R. CV No. 85866 is **REVERSED** and **SET ASIDE**.

ACCORDINGLY, RCJ Lines is DIRECTED to pay:

1. Eight Hundred Forty Thousand Pesos (₱840,000.00) representing the unpaid balance of the purchase price;
2. Interest of twelve percent (12%) per annum on the unpaid balance to be computed from November 5, 1990⁸⁶ until June 30, 2013;
3. Interest of six percent (6%) per annum on the unpaid balance to be computed from July 1, 2013,⁸⁷ until fully paid;
4. Attorney's fees in the fixed amount of ₱30,000.00.⁸⁸

⁸³ RTC-TSN dated March 26, 2001 pp. 538-541.

⁸⁴ Section 3, Rule 130, REVISED RULES ON EVIDENCE.

⁸⁵ The payment of attorney's fees is justified under Article 2208 (2) of the Civil Code.

⁸⁶ Per the price quotation, full payment shall be made upon complete installation of the units. RCJ Lines claimed that units were finally installed sometime in January 1991 without any proof, while Phil-Air claimed that all parts were delivered on November 5, 1990, as proved by the sales invoice. Thus, the installation shall be deemed to have been done on November 5, 1990.

⁸⁷ The interest on forbearance of money was reduced to six percent (6%) by the Bangko Sentral ng Pilipinas through BSP Circular No. 799 which amended Central Bank Circular No. 905. BSP Circular No. 799, which took effect on July 1, 2013.

The total amount to be recovered shall further be subject to the legal interest rate of six percent (6 %) per annum from the finality of this decision until fully paid.⁸⁹

The attachment bond posted by Phil-Air shall be levied upon to satisfy the ₱50,000.00 temperate damages awarded to RCJ Lines and the ₱82,274.00 refund of the counter-bond premium.

SO ORDERED.



ARTURO D. BRION
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
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.



ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

⁸⁸ *Supra* note 60.

⁸⁹ Section 1 of BSP Circular No. 799 dated July 1, 2013.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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