



Republic of the Philippines
 Supreme Court
 Baguio City

SECOND DIVISION

FATIMA O. DE GUZMAN-FUERTE,
 married to **MAURICE GEORGE**
FUERTE,

Petitioner,

- versus -

SPOUSES SILVINO S. ESTOMO and
CONCEPCION C. ESTOMO,
 Respondents.

G.R. No. 223399

Present:

CARPIO,* *J.*, Chairperson,
 PERALTA,
 PERLAS-BERNABE,
 CAGUIOA, and
 REYES, JR., *JJ.*

Promulgated:

23 APR 2018

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DECISION

PERALTA, J.:

For resolution of this Court is a petition for review on *certiorari* filed by herein petitioner Fatima O. De Guzman-Fuerte (*Fuerte*) assailing the Decision¹ dated October 6, 2015 and Resolution² dated February 16, 2016 of the Court of Appeals (*CA*) in CA-G.R. SP No. 138513 which reversed and set aside the Decision³ of the Regional Trial Court (*RTC*) of Antipolo City, Branch 98, in SCA Case No. 12-1237.

The instant case stemmed from a Complaint⁴ for unlawful detainer dated August 10, 2009 filed by *Fuerte* against respondents spouses Silvino S. Estomo (*Silvino*) and Concepcion C. Estomo (*Concepcion*) (*Spouses Estomo*).

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.
¹ Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; *rollo*, pp. 30-38.
² *Id.* at 39-40.
³ Penned by Judge Ma. Consejo Gengos-Ignalaga, *id.* at 118-122.
⁴ *Rollo*, pp. 41-44.

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The subject property is situated at Block 3, Lot 2, Birmingham Homes, Dalig City 1, Antipolo City, covered by Transfer Certificate of Title (TCT) No. R-55253.

Fuerte alleged that Manuela Co (Co) executed a Deed of Real Estate Mortgage over the subject property in her favor. Upon Co's failure to pay the loan, Fuerte caused the foreclosure proceedings and eventually obtained ownership of the property. However, the writ of possession was returned unsatisfied since Co was no longer residing at the property and that the Spouses Estomo and their family occupied the same. It was only after the said return that Fuerte discovered and verified that the Spouses Estomo were in possession of the property. In a letter⁵ dated December 1, 2008, she demanded them to vacate and surrender possession of the subject property and pay the corresponding compensation. The Spouses Estomo refused to heed to her demands.

In their Answer,⁶ the Spouses Estomo denied that they illegally occupied the subject property. They also denied the existence of the December 1, 2008 letter. They averred that they acquired the property from the Homeowners Development Corporation on February 15, 1999 through a Contract to Sell, registered it under their names, covered by TCT No. 407613, and had been their family home since 2000. Sometime in 2006, Concepcion sought the services of Co, a real estate broker, to assist her in securing a loan. Co obtained the certificate of title to be shown to potential creditors, however, she never returned it. The TCT was cancelled by an alleged Absolute Sale of Real Property executed on June 22, 2006, when Silvino was out of the country as a seaman, and then TCT No. R-39632 was issued under Co's name. On July 13, 2006, Co mortgaged the subject property in the amount of ₱800,000.00. Consequently, the Spouses Estomo filed an annulment case against Co and Fuerte on January 30, 2007. When they were served with the writ of possession in favor of Fuerte, they filed a *terceria* with the sheriff, a motion to recall the writ of possession, and asked for the consolidation of the land registration case to the annulment case on August 5, 2008. In the Orders dated October 28, 2008 and October 30, 2008, the trial court quashed the writ and directed the consolidation of the cases.

The Spouses Estomo also prayed that the complaint be dismissed on the ground that the allegations are insufficient to establish a cause of action for unlawful detainer. By Fuerte's own allegation, the Spouses Estomo's entry to the property was unlawful from the beginning. The case cannot be considered as one for forcible entry since it was never alleged that their entry was by means of force, intimidation, threat, stealth or strategy. Lastly, prescription has already set, since Fuerte was aware that the spouses possessed

⁵ *Id.* at 50.

⁶ *Id.* at 52-62.



the property when they filed the complaint for annulment of deed of absolute sale and real estate mortgage against Co and Fuerte on January 30, 2007.

In a Decision dated October 3, 2012, the Municipal Trial Court in Cities (MTCC) of Antipolo City, Branch 1 dismissed the complaint without prejudice finding that Fuerte failed to attach in the complaint a copy of the demand letter and establish that the same was duly received by the spouses, thus:

WHEREFORE, premises considered, the complaint is ordered dismissed without prejudice.

SO DECIDED.⁷

On appeal, the RTC reversed and set aside the decision of the MTCC. It held that Fuerte established the existence of the December 1, 2008 demand letter, which was sent through registered mail under Registry Receipt No. 5209 of the Antipolo City Post Office. The notice to vacate the subject property served through registered mail is a substantial compliance with the modes of service under Section 2,⁸ Rule 70 of the Rules of Court. Suits for annulment of sale, cancellation of titles, reconveyance as well as criminal complaints for falsification do not operate to abate ejectment proceedings involving the same property. The dispositive portion reads:

WHEREFORE, premises considered, the instant appeal is hereby ordered GRANTED.

Accordingly, the Decision dated October 3, 2012 rendered by the Municipal Trial Court in Cities, Branch 1, Antipolo City, is ordered REVERSED and SET ASIDE and a new one is entered ordering the [respondents] Spouses Silvino S. Estomo and Concepcion C. Estomo as follows:

1. To vacate and surrender the possession of the property situated at Block 3, Lot 2, Birmingham Homes, Dalig City 1, Antipolo City and covered by Transfer Certificate of Title No. R-55253 in favor of [petitioner];
2. To pay [petitioner] the amount of Five Thousand Pesos ([P]5,000.00) representing the compensation for the use and occupation of the property computed from the time the complaint was filed on August 12, 2009 until the actual physical possession of the property has been delivered in favor of the [petitioner];

⁷ *Id.* at 95.

⁸ Section 2 - *Lessor to proceed against lessee only after demand* -

Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

3. To pay the [petitioner] the amount of Ten Thousand Pesos ([P]10,000.00) as and for attorney's fees;

SO ORDERED.⁹

Subsequently, the CA reversed and set aside the ruling of the RTC. It held that the complaint in ejectment cases should embody such statement of facts as to bring the party clearly within the class of cases for which Section 1,¹⁰ Rule 70 of the Rules of Court provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parole evidence. The CA found that the complaint failed to describe that the possession by the Spouses Estomo was initially legal or tolerated and became illegal upon termination of lawful possession. The *fallo* of the decision reads:

WHEREFORE, the instant Petition for Review is hereby GRANTED. The assailed October 1, 2014 Decision of the Antipolo City Regional Trial Court, Fourth Judicial Region, Branch 98 in SCA CASE No. 12-1237 is REVERSED and SET ASIDE. Resultantly, the Unlawful Detainer & Damages case filed by the herein [petitioner] against the herein [respondents] is DISMISSED.

SO ORDERED.¹¹

Upon denial of her Motion for Reconsideration, petitioner elevated the case before this Court raising the following issues:

1. The CA, in reversing and setting aside the RTC decision, decided a question of substance not in accord with law and with the applicable jurisprudence as instructively laid down by this Honorable Court when it ruled that the complaint filed by the petitioner does not constitute unlawful detainer and thereupon concluded that MTCC Antipolo where the case was filed had no jurisdiction to try it, being without legal and/or factual basis;
2. The CA, in ruling to dismiss the complaint filed by the petitioner with the MTCC Antipolo, defied Section 8, Rule 40 of the Rules of Court thereby it departed from the accepted and usual course of judicial proceeding as to call for an exercise of power of supervision of this Honorable Court.

⁹ Rollo p. 122.

¹⁰ SECTION 1. *Who May Institute Proceedings, and When.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

¹¹ Rollo p. 37.



The instant petition is devoid of merit.

At the outset, jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.¹²

Fuerte maintains that it is a hornbook rule that the purchaser of a real property from a vendor who no longer occupies the said property need not prove as an essential requisite how and the manner the present possessor came into occupation. As long as she fulfills the requisite of demand to vacate, she may bring an action for unlawful detainer against the Spouses Estomo who defied her demand.¹³ She avers that prior to the expiration of the period she granted to the spouses to vacate the premises, their occupation of the subject property was only by mere tolerance. The same became illegal upon the expiration of the said period.

In summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of the contested property. The Municipal Trial Courts, Municipal Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure.¹⁴

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.¹⁵

A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

¹² *Padlan v. Dinglasan*, 707 Phil. 83, 91 (2013).

¹³ *Rollo*, p. 22.

¹⁴ *Spouses Norberte v. Spouses Mejia*, 755 Phil. 234, 240 (2015).

¹⁵ *Canlas v. Tubil*, 616 Phil. 915, 924 (2009).



- (a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;
- (b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;
- (c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and
- (d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.¹⁶

As the allegations in the complaint determine both the nature of the action and the jurisdiction of the court, the complaint must specifically allege the facts constituting unlawful detainer. In the absence of these factual allegations, an action for unlawful detainer is **not** the proper remedy and the municipal trial court does not have jurisdiction over the case.¹⁷

Here, the pertinent portion of the Complaint reads:

x x x x

3. Plaintiff is the absolute and registered owner of that parcel of land with a house and structures thereon situated at Blk 3, Lot 2, Birmingham Homes, Dalig City 1, Antipolo City, being illegally occupied by the defendants, covered by Transfer Certificate of Title No. R-55253 of the Registry of Deeds for the City of Antipolo, a machine copy thereof is hereto attached as **Annex "A"** and made an integral part hereof.

4. Plaintiff came to know and discovered that defendants are illegally occupying and staying at [the] above subject premises without their (*sic*) permission, consent and approval when the writ of possession issued by the Regional Trial Court of Antipolo City, Branch 74, in LRC Case No. 07-3916, over the subject premises in favor of the plaintiff and directed to the mortgagor thereof, Manuela Co, was returned UNSATISFIED by Sheriff Rolando C. Leyva, on the ground that the said mortgagor is no longer residing thereat and the persons occupying the subject property are the defendants and their family, a machine copy of the Parital (*sic*) Sheriff's Report, dated August 20, 2008, is hereto attached as **Annex "B"** and made an integral part hereof.

5. Hence, upon verification that indeed, the defendants are occupying and staying on the subject premises obviously WITHOUT their knowledge, consent, permission and approval and therefore, unlawful, plaintiff demanded that they vacate the subject premises and forthwith, to deliver the actual physical possession thereof to them but despite of the foregoing, the defendants unjustly and unlawfully failed and refused to comply thereto, resulting to the undue and irreparable damage and prejudice of the plaintiff.

6. In view thereof, plaintiff was constrained to refer the matter to her counsel who then made a FORMAL DEMAND by way of a demand letter

¹⁶ *Macaslang v. Spouses Zamora*, 644 Phil. 337, 351 (2011).

¹⁷ *Spouses Golez v. Heirs of Bertuldo*, 785 Phil. 801, 812 (2016).

upon the defendants to vacate the subject premises and forthwith, to surrender the possession thereof to the plaintiffs and to pay them the corresponding amount of monthly compensation of at least TEN THOUSAND PESOS ([P]10,000.00), Philippine Currency, from the time of their illegal occupancy, or from August 20, 2008, until they shall have fully vacated the subject premises and the actual physical possession thereof shall have been completely delivered and turned to the plaintiff, a machine copy of the demand letter of plaintiff's counsel dated December 01, 2008, is hereto attached as **Annex "B"** (*sic*) and made an integral part hereof.

7. Notwithstanding the foregoing demands, defendants unjustly and unlawfully failed and refused to comply thereto and they continue to stubbornly, defiantly, unlawfully and unjustly refuse and fail to vacate the subject premises and to surrender and deliver the actual physical possession thereof to the plaintiff and to pay the just compensation for their undue and unlawful use and occupancy of the subject premises, thereby resulting to herein plaintiff's undue and irreparable damage and prejudice.

x x x¹⁸

A perusal of the Complaint shows that it contradicts the requirements for unlawful detainer. A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established.¹⁹ Paragraphs 2 and 3 make it clear that Spouses Estomo's occupancy was illegal and without Fuerte's consent. Likewise, the Complaint did not contain an allegation that Fuerte or her predecessor-in-interest tolerated the spouses' possession on account of an express or implied contract between them. Neither was there any averment which shows any overt act on Fuerte's part indicative of her permission to occupy the land.

Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for them to occupy the disputed property.²⁰ There should be any supporting evidence on record that would show when the respondents entered the properties or who had granted them to enter the same and how the entry was effected.²¹ Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.²²

Moreover, the December 1, 2008 demand letter supports the fact that she characterized the Spouses Estomo's possession of the subject property as unlawful from the start, to wit:

¹⁸ Rollo pp. 41-43.

¹⁹ *Quijano v. Amante*, 745 Phil. 40, 52 (2014).

²⁰ *Id.*

²¹ *Ocampo v. Heirs of Bernardino Dionisio*, 744 Phil. 716, 724 (2014).

²² *Echanes v. Spouses Hailar*, G.R. No. 203880, August 10, 2016, 800 SCRA 93, 103.

Dear Mr. & Mrs. Estomo:

We represent our client, **DR. FATIMA O. DE GUZMAN-FUERTE**, the absolute and registered owner in fee simple of the above premises you are **presently occupying without her consent, permission nor approval.**

Our client is presently the absolute registered owner in fee simple of the above premises you are presently occupying covered by Transfer Certificate of Title No. R-55253 of the Registry of Deeds for the City of Antipolo. Please note that a writ of possession is issued by the Regional Trial Court of Antipolo City, Branch 74, in LRC Case No. 07-3916, anent the said real property but which cannot be enforced as against you being third persons in the case, pursuant to the ruling laid down in *Philippine National Bank vs. Court of Appeals* (G.R. No. 135219, January 17, 2002, 374 SCRA 22[,] 31-33). In the said case, it is mandated that our client instead institute the appropriate ejectment suit or *accion reivindicatoria* for the purpose of obtaining possession over their said real property. **Nevertheless, since your occupancy of our client's property is without her consent, permission and approval, it is, therefore, unlawful.**

In view thereof, FORMAL DEMAND is made upon you to immediately vacate the premises you are presently unlawfully occupying and to peacefully surrender the same to our client and to pay our client the corresponding compensation for your use thereof in the amount of not less than TEN THOUSAND PESOS ([P]10,000.00), Philippine Currency, within fifteen (15) days from your receipt hereof. Your failure to comply shall constrain us to institute the appropriate ejectment suit against you and claim from you such other damages and such relief as may be allowed and warranted by law.²³

It is apparent from the letter that Fuerte demanded the spouses to immediately vacate the subject property, contrary to her allegation in the instant petition that she granted such period, during which she tolerated the spouses' possession. She failed to satisfy the requirement that her supposed act of tolerance was present right from the start of the possession by the Spouses Estomo. It is worth noting that the absence of the first requisite is significant in the light of the Spouses Estomo's claim that they have been occupying the property as owner thereof, and that they have filed an annulment of sale and real estate mortgage against Co and Fuerte even before the property was foreclosed.

From the foregoing, this Court finds that the complaint failed to state a cause of action for unlawful detainer. Since the complaint fell short of the jurisdictional facts to vest the court jurisdiction to effect the ejectment of respondent, the MTCC failed to acquire jurisdiction to take cognizance of Fuerte's complaint and the CA correctly dismissed the unlawful detainer case against the Spouses Estomo.

²³

Rollo, p. 50. (Emphasis and underscoring supplied)



Fuerte asseverates that the pronouncement of the CA that the dismissal of the unlawful detainer case “is not a bar for the parties or even third persons to file an action for the determination of the issue of ownership” merely invites multiplicity of suits. Such dismissal defied Section 8,²⁴ Rule 40 of the Rules of Court. She alleged that the CA should have remanded the case to the RTC as the appellate court which has the original and exclusive jurisdiction over the nature and subject matter of the complaint to proceed with the case.

It is well to be reminded of the settled distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land. What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reivindicatory action (*accion reivindicatoria*) is that the first is limited to the question of *possession de facto*. Unlawful detainer suits (*accion interdictal*), together with forcible entry, are the two forms of ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reivindicatoria* or *the action to recover ownership which also includes recovery of possession*, make up the three kinds of actions to judicially recover possession.²⁵

Unlawful detainer and forcible entry suits are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession.²⁶

A judgment rendered in a forcible entry case, or an unlawful detainer as in this case, will not bar an action between the same parties respecting title or ownership because between a case for forcible entry or unlawful detainer and an *accion reivindicatoria*, *there is no identity of causes of action*. Such determination does not bind the title or affect the ownership of the land; neither is it conclusive of the facts therein found in a case between the same

²⁴ SECTION 8. *Appeal from Orders Dismissing Case Without Trial; Lack of Jurisdiction*. — If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

²⁵ *Heirs of Casilang, Sr. v. Casilang-Dizon*, 704 Phil. 397, 410 (2013).

²⁶ *Barrientos v. Rapal*, 669 Phil. 438, 444, 447 (2011).



parties upon a different cause of action involving possession.²⁷ In fact, Section 18, Rùlè 70 of the Rules of Court expressly provides that a "judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land." Since there is no identity of causes of action, there can be no multiplicity of suits.

Furthermore, the Court expounded in *Serrano v. Spouses Gutierrez*²⁸ that the first paragraph of Section 8, Rule 40 contemplates an appeal from an order of dismissal issued without trial of the case on the merits, while the second paragraph deals with an appeal from an order of dismissal but the case was tried on the merits. Both paragraphs, however, involve the same ground for dismissal, *i.e.*, lack of jurisdiction. The above section ordains the RTC not to dismiss the cases appealed to it from the first level court which tried the same albeit without jurisdiction, but to decide the case on the merits.

In the case at bar, the RTC actually treated the case as an appeal, with the decision starting with, "This is an appeal from the Decision dated October 3, 2012 rendered by the Municipal Trial Court in Cities, Branch 1 Antipolo City" and then discussed the merits of the "appeal" in the unlawful detainer case. In the dispositive portion of said decision, the trial court reversed the MTCC's findings and conclusions. In a petition for review filed before it, the CA decided the case based on the judgment issued by the RTC in the exercise of its appellate jurisdiction.

It cannot be overemphasized that jurisdiction over the subject matter is conferred only by law and it is "not within the courts, let alone the parties, to themselves determine or conveniently set aside." Neither would the active participation of the parties nor *estoppel* operate to confer original and exclusive jurisdiction where the court or tribunal only wields appellate jurisdiction over the case.²⁹

Without a doubt, the registered owner of real property is entitled to its possession. However, the registered owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper remedy, and once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.³⁰ In this case, Fuerte chose the remedy of unlawful detainer to eject the Spouses Estomo, but, failed to sufficiently allege the facts which are necessary to vest jurisdiction to MTCC over an unlawful detainer case. In fine,

²⁷ *Spouses Ocampo v. Heirs of Dionisio*, 744 Phil. 716, 728 (2014).

²⁸ 537 Phil. 187, 197 (2006).


²⁹ *Maslag v. Monzon*, 711 Phil. 274, 285 (2013).

³⁰ *Suarez v. Sps. Emboy*, 729 Phil. 315, 329 (2014).

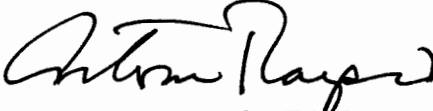
the CA did not commit reversible error in dismissing Fuerte's complaint for unlawful detainer.

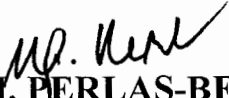
WHEREFORE, the instant petition filed by petitioner Fatima O. De Guzman-Fuerte assailing the Decision dated October 6, 2015 and Resolution dated February 16, 2016 of the Court of Appeals in CA-G.R. SP No. 138513 is hereby **DENIED**.

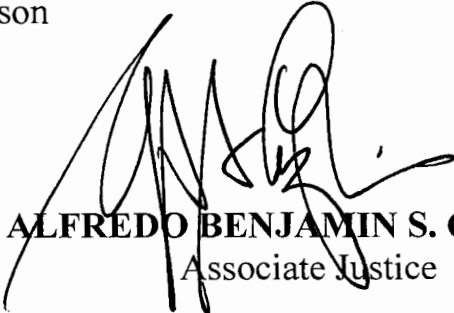
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Acting Chief Justice
Chairperson


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

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


ANTONIO T. CARPIO
Acting Chief Justice