



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

WENCESLAO A. SOMBERO, JR.,
 Petitioner,

G.R. Nos. 237888 & 237904

Present:

- versus -

PERALTA, CJ., *Chairperson,*
 CAGUIOA, *Working Chairperson,*
 REYES, J. JR.,
 LAZARO-JAVIER, *and*
 LOPEZ, JJ.

**OFFICE OF THE OMBUDSMAN
 and NATIONAL BUREAU OF
 INVESTIGATION,**

Promulgated:

Respondents.

JUL 28 2020

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DECISION

REYES, J. JR., J.:

Certiorari is an extraordinary prerogative writ that is not demandable as a matter of right. For the Court to even consider a petition for *certiorari*, it must clearly and convincingly show the presence of grave abuse of discretion.¹ Unfortunately, such is not the case here.

Before this Court, on March 26, 2018, petitioner Wenceslao “Wally” A. Sombero, Jr. (Sombero) filed the instant Petition² for *Certiorari* under Rule 65 of the Rules of Court with Urgent Application for the Issuance of a Restraining Order or *Status Quo Ante Order* seeking to annul and set aside the Consolidated

¹ *Clave v. Office of the Ombudsman (Visayas)*, 801 Phil. 967, 975 (2016).

² *Rollo* (Vol. 1), pp. 3-46.

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Resolution³ dated October 23, 2017 and Consolidated Order⁴ dated November 23, 2017 of the Office of the Ombudsman (OMB) in OMB-C-C-16-0525, OMB-C-C-17-0001, and OMB-C-C-17-0089 finding probable cause to indict him, along with several others, for: (i) Plunder defined and penalized under Section 2 of Republic Act (R.A.) No. 7080⁵; (ii) Violation of Section 3(e) of R.A. No. 3019⁶; (iii) Direct Bribery under Article 210 of the Revised Penal Code (RPC); and (iv) Presidential Decree No. (PD) 46.⁷

Factual Antecedents

On December 16, 2016, Sombero filed before the OMB a Complaint-Affidavit⁸ for violation of Section 3(e) of R.A. No. 3019 against Bureau of Immigration (BI) Deputy Commissioners Al C. Argosino (Argosino) and Michael B. Robles (Robles). This was docketed as OMB-C-C-16-0525.

On December 22, 2016, a Second Complaint⁹ was filed by the then BI Acting Intelligence Chief Charles T. Calima, Jr. (Calima) before the OMB also charging Argosino and Robles with violation of Section 3(e) of R.A. No. 3019 and R.A. No. 7080, docketed as OMB-C-C-17-0001.

Lastly, on January 26, 2017, National Bureau of Investigation (NBI) Director Dante A. Gierran filed the Third Complaint,¹⁰ this time charging Argosino, Robles, Calima, Sombero, and Jack Lam (Lam) with direct bribery, receiving/soliciting gifts, violation of Section 3(e) of R.A. No. 3019, and PD 46. This was docketed as OMB-C-C-17-0089.

All three complaints are predicated upon the same set of facts summarized below:

On November 24, 2016, pursuant to BI Mission Order (MO) No. JHM-2016-065¹¹ issued by Commissioner Jaime H. Morente (Commissioner Morente), the Fugitive Search Unit of the BI conducted a law enforcement operation at the Fontana Leisure Park and Casino (Fontana) in Clark Freeport Zone, Angeles, Pampanga, resulting in the apprehension of 1,316 undocumented Chinese nationals who were running an illegal online casino.¹² Fontana was reportedly owned by Lam and managed by Ng Khoen Hon also known as Norman Ng (Ng).¹³

³ Id. at 47-67.

⁴ Id. at 68-76.

⁵ AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER (As amended by R.A. No. 7659, approved Dec. 13, 1993).

⁶ ANTI-GRAFT AND CORRUPT PRACTICES ACT.

⁷ MAKING IT PUNISHABLE FOR PUBLIC OFFICIALS AND EMPLOYEES TO RECEIVE, AND FOR PRIVATE PERSONS TO GIVE, GIFTS ON ANY OCCASION, INCLUDING CHRISTMAS.

⁸ *Rollo* (Vol. I), pp. 77-99.

⁹ Id. at 125-140.

¹⁰ Id. at 155-175.

¹¹ Dated November 23, 2016; id. (Vol. II) at 589.

¹² Id. (Vol. I) at 49.

¹³ Id. at 50.

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Amidst the crisis in Fontana, Sombero allegedly reached out to Ng, introduced himself as the President of the Asian Gaming Service Providers Association, Inc. (AGSPA), and arranged for the latter to meet with Department of Justice (DOJ) Secretary Vitaliano N. Aguirre II (Secretary Aguirre) and Argosino.¹⁴

On November 26, 2016, at the VIP room of High Street Café situated inside Shangri-La Hotel in Bonifacio Global City, Sombero introduced Lam, Ng, and a certain Alex Yu (Yu) to Secretary Aguirre and Argosino.¹⁵ Sombero then told Secretary Aguirre about the plight of the businessmen and even uttered the words: “*Secretary, matagal na walang nag-aalaga kay Jack Lam. So pwede ho ba ang Secretary of Justice ang mang (sic) ninong sa kanya?*”¹⁶ However, Secretary Aguirre ignored this and left the room within minutes.¹⁷ Thus, it was Sombero and Argosino who allegedly agreed on the amount of ₱100 Million and ₱50 Million of which must be given immediately.¹⁸ That same day, before midnight, Argosino and Robles showed up in the City of Dreams (COD) in Pasay City and waited at a restaurant.¹⁹ At around 2:00 a.m. on November 27, 2016, Sombero, carrying two paper bags each containing ₱10 Million, met with Argosino and Robles at the restaurant.²⁰ After a few conversations, Sombero left the restaurant, leaving the two bags with Argosino and Robles.²¹ By 5:45 a.m., Sombero was back with three more paper bags filled with ₱10 Million each.²² They then proceeded to the parking lot and loaded three paper bags in Argosino’s car and the other two paper bags in Robles’ car.²³ Sombero also took ₱2 Million from the ₱50 Million.²⁴

On November 30, 2016, Argosino, Robles, Sombero, Ng, and Yu met at a suite at the Crown Hotel and discussed bail matters.²⁵ After that, Argosino kept on demanding the other ₱50 Million even though none of the Chinese workers had been released.²⁶ Thus, Sombero went to Calima and divulged the transaction.²⁷ Consequently, Calima visited Argosino and Robles on separate occasions and informed them that he knew about the ₱50 Million exchange on November 27, 2016 at COD.

On December 8, 2016, Argosino and Robles approached Commissioner Morente and claimed that Calima was harassing them. Calima was thus

¹⁴ Id.
¹⁵ Id.
¹⁶ Id.
¹⁷ Id.
¹⁸ Id. at 51.
¹⁹ Id.
²⁰ Id.
²¹ Id.
²² Id.
²³ Id.
²⁴ Id.
²⁵ Id.
²⁶ Id. at 52.
²⁷ Id.

summoned to the Commissioner's office.²⁸ There, Calima showed Commissioner Morente the evidence pertaining to Argosino and Robles' transaction with Sombero.²⁹ It was then that the two Deputy Commissioners admitted that they were in possession of the ₱50 Million.³⁰ Thereafter, Calima and Argosino met after office hours to discuss damage control during which, Calima's share was fixed at ₱18 Million.³¹ On December 9, 2016, at around 2:00 p.m., Argosino delivered two paper bags containing a total of ₱18 Million to Calima.³² Thereafter, Calima was fired by Secretary Aguirre while Robles and Argosino resigned.

Pursuant to the Order³³ dated March 10, 2017 of the OMB directing the respondents in OMB-C-C-17-0089 to submit their counter-affidavits, Sombero, in particular, submitted his Counter-Affidavit³⁴ on April 10, 2017, claiming that he only assisted the detained Chinese nationals in his capacity as President of AGSPA. Moreover, he asserted that it was Argosino who asked for ₱100Million and insisted that half of the said amount be given at once as a show of goodwill. He also contended that he received ₱2 Million from Argosino for the purpose of forming a legal team to assist in the processing of the release of the Chinese individuals.

OMB Consolidated Resolution and Order

On October 23, 2017, the OMB issued the assailed Consolidated Resolution finding probable cause to charge Sombero, Argosino, Robles, Calima, and Lam. The dispositive portion of which, reads:

WHEREFORE, finding probable cause to indict respondents, let the appropriate Informations be **FILED** before the proper court/s for the following criminal charges:

One (1) count of **Violation of Section 3 (e) of [R.A. No.] 3019** against [**ARGOSINO, ROBLES, and petitioner**];

One (1) count of **Violation of Section 3 (e) of [R.A. No.] 3019** against [**CALIMA**];

One (1) count of **Violation [of R.A. No.] 7080** against [**ARGOSINO, ROBLES, and petitioner**];

One (1) count of **Direct Bribery (Article 210, Revised Penal Code)** against [**ARGOSINO, ROBLES, and petitioner**];

One (1) count of **Direct Bribery (Article 210, Revised Penal Code)** against [**CALIMA**];

²⁸ Id.

²⁹ Id. at 164.

³⁰ Id.

³¹ Id. at 165.

³² Id.

³³ Id. at 152-153.

³⁴ Id. (Vol. II) at 811-826.

One (1) count of **Violation of [PD 46]** against **[ARGOSINO, ROBLES, petitioner, and LAM]**; and

One (1) count of **Violation of [PD 46]** against **[ARGOSINO, ROBLES, and CALIMA]**.

SO ORDERED.³⁵

However, upon separate Motions for Reconsideration filed by Sombero, Calima, Lam, Argosino, and Robles, the OMB issued a Consolidated Order dated November 23, 2017, modifying its earlier Resolution, *viz.*:

WHEREFORE, finding probable cause to indict respondents except [Calima], let the appropriate Informations be **FILED** before the proper court/s for the following criminal charges:

One (1) count of Violation of Section 3 (e) of [R.A. No.] 3019 against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Violation [of R.A. No] 7080 against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Article 210, Revised Penal Code against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Violation of [PD 46] against [ARGOSINO, ROBLES, petitioner, and LAM].

SO ORDERED.³⁶

After due consideration of the testimonial and documentary evidence, the OMB concluded that Argosino and Robles, taking advantage of their official positions as BI Deputy Commissioners, conspired with Sombero in acquiring ill-gotten wealth in the aggregate amount of ₱50 Million intended as a bribe to release the 1,316 undocumented Chinese nationals found illegally working inside Fontana.

As regards Calima, the OMB found that Commissioner Morente's testimony before the Committee on Accountability of Public Officers and Investigations on February 16, 2017 validated Calima's contention that his actions were pursuant to a duly authorized counter-intelligence operation that he was conducting and that his receipt of the ₱18 Million was solely for the purpose of gathering more evidence against Argosino and Robles. Thus, the charges against Calima were dropped.

³⁵ Id. (Vol. I) at 66.

³⁶ Id. at 75.

Accordingly, on March 23, 2018, the OMB filed before the Sandiganbayan (SB) an Information³⁷ charging Argosino, Robles, and Sombero with violation of R.A. No. 7080 docketed as SB-18-CRM-0241.

Hence, this Petition for *Certiorari* filed by Sombero raising the following issues:

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FOUND PROBABLE CAUSE TO CHARGE [HIM] WITH PLUNDER.

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT VIOLATED [HIS] RIGHT TO DUE PROCESS.³⁸

Our Ruling

Plainly stated, the issue in this case is whether or not the OMB committed any grave abuse of discretion in rendering the assailed Consolidated Resolution and Consolidated Order finding probable cause against Sombero, *et al.* for the charges against them.

The Court rules in the negative.

Article XI, Section 12 of the Constitution³⁹ and R.A. No. 6670⁴⁰ empower the OMB to act on criminal complaints against public officials and government employees with a wide latitude of investigatory and prosecutory prerogatives.⁴¹ Respect for the OMB's constitutional mandate and practicality leads this Court to exercise restraint in interfering with the former's performance of its functions.⁴² Besides, its power to investigate⁴³ puts OMB in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. And, being a non-trier of facts, this Court generally defers to the

³⁷ Id. (Vol. II) at 1024-1027.

³⁸ Id. at 15-16.

³⁹ CONSTITUTION, Article XI. Accountability of Public Officers

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SEC.12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

⁴⁰ AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES (1989).

⁴¹ *Presidential Commission on Good Government v. Desierto*, 445 Phil. 154-219 (2003).

⁴² *Dichaves v. Ombudsman*, 802 Phil. 564-597 (2016).

⁴³ CONSTITUTION, Article XI. Accountability of Public Officers

x x x

SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

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sound judgment of the OMB except if it has been made with grave abuse of discretion.⁴⁴

Certainly, the burden of demonstrating all the facts essential to establish the right to a writ of *certiorari* lies with Sombero.⁴⁵ He must sufficiently prove that the OMB's Consolidated Resolution and Consolidated Order finding probable cause to indict him may be reviewed or even set aside by this Court based on the narrow ground of grave abuse of discretion amount to lack or excess of jurisdiction.

Here, Sombero posits that there is no probable cause to charge him with plunder, in conspiracy or otherwise, since: (a) the amassing, accumulation, and acquisition of the ill-gotten wealth must be accomplished through a series or combination of overt or criminal acts; and (b) the element of a "main plunderer" is missing. Clearly, Sombero's arguments are centered on the OMB's appreciation of facts. And, if only to determine the presence or absence of grave abuse of discretion, the Court now looks into the OMB's justifications in concluding that probable cause exists in this case.

***There is probable cause to indict
Sombero, et al.***

Let it *first* be emphasized that Sombero's Petition involves the preliminary stage in a criminal case. During a preliminary investigation, the OMB merely determines whether probable cause exists to warrant the filing of a criminal case against an accused. Such investigation is not a part of the trial and is executive in nature.⁴⁶ The executive finding of probable cause requires only substantial evidence and not absolute certainty of guilt.⁴⁷ The finding of probable cause need only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused.⁴⁸ Thus, the OMB is not bound by the technical rules on evidence.⁴⁹ Therefore, in order to arrive at its finding of probable cause, the OMB only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, grave abuse of discretion can be attributed to its ruling.⁵⁰

After a judicious review, the Court holds that, in the present case, the OMB's finding of probable cause for violation of R.A. No. 7080 against Sombero, *et al.* is supported by substantial evidence. The crime of Plunder, as culled from the law itself (*i.e.*, R.A. No. 7080), has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of

⁴⁴ *Dichaves v. Ombudsman*, supra note 42.

⁴⁵ *People v. Sandiganbayan*, 681 Phil. 90-127 (2012).

⁴⁶ *Ledesma v. Court of Appeals*, 344 Phil. 207-240 (1997).

⁴⁷ *Dichaves v. Ombudsman*, supra note 42.

⁴⁸ *Galario v. Ombudsman*, G.R. No. 166797, July 10, 2007, 527 SCRA 190.

⁴⁹ *Estrada v. Ombudsman*, 751 Phil. 821-980 (2015).

⁵⁰ *Clave v. Office of the Ombudsman (Visayas)*, supra note 1.

his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)⁵¹; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated, or acquired is at least ₱50 Million Pesos. Here, as the correctly found by the OMB, the presence of the first element is undisputed for Argosino and Robles were serving as BI Deputy Commissioners at the time relevant to the case.⁵² Next, based on the documentary evidence adduced, Argosino and Robles, in connivance with Sombero, came into possession of ill-gotten wealth through a series of overt acts committed on a single day – in the wee hours of November 27, 2016, they received or collected a sum of money on two instances in consideration for their supposed intercession or assistance in the release of the detained Chinese nationals.⁵³ Lastly, on the strength of Ng and Yu's affidavits and of Robles' own admission in his Counter-Affidavit, the total aggregate amount involved is ₱50 Million.

Anent the requirement of a main plunderer, the Office of the Solicitor General in its Consolidated Comment⁵⁴ properly pointed out that what is at issue here are the Consolidated Resolution and Consolidated Order issued by the OMB after finding probable cause to indict Sombero *et al.* for Plunder. The disquisition then regarding the lack of a main plunderer – who was supposed to be identified in the Information – is at this stage, premature. In *Macapagal-Arroyo v. People*,⁵⁵ we held that because Plunder is a crime that only a public official can commit by amassing, accumulating, or acquiring ill-gotten wealth in the total value of at least ₱50 Million, the identification in the Information of such public official as the main plunderer among the several individuals thus charged, is logically necessary under the law itself. It is, thus, clear that the main plunderer must be identified in

⁵¹ Section 1 (d) states:

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and or business associates by any combination or series of the following means or similar schemes.

- 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
- 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
- 4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
- 5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- 6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

⁵² *Rollo* (Vol. I), p. 60.

⁵³ *Id.*

⁵⁴ *Id.* (Vol. II) at 1049-1071.

⁵⁵ 808 Phil. 1042-1107 (2017).

the Information and not necessarily in the questioned OMB Consolidated Resolution and Consolidated Order.

Sombero's constitutional right to due process was not violated.

Sombero maintains that his right to due process was violated. According to him, the initial complaint against him and his co-respondents *a quo* was for violation of Section 3(e) of R.A. No. 3019. Yet, the OMB, after preliminary investigation, filed an Information against him and several others for violation of R.A. No. 7080 instead.

Surely, Sombero's argument is untenable. *Enrile v. Salazar*⁵⁶ tells us that there is nothing inherently irregular or contrary to law in filing against an accused an indictment for an offense different from what is charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation. Corollarily, the OMB is given ample room and a wide-ranging margin of discretion in determining not only what will constitute sufficient evidence that will establish "probable cause" for the filing of an information against a supposed offender, but the proper offense to be charged as well against said offender depending again on the evidence submitted by the parties during the preliminary investigation. "In fact, the Ombudsman may investigate and prosecute on its own, without need for a complaint-affidavit, for as long as the case falls within its jurisdiction."⁵⁷

In fine, the Court finds the foregoing facts sufficient to engender a reasonable belief that the overt acts of Sombero satisfy all of the elements of the law allegedly violated. In turn, these facts rule out any arbitrariness in the OMB's determination of probable cause. Stated otherwise, Sombero failed to show that the OMB capriciously and whimsically exercised its judgment in determining the existence of probable cause to warrant the issuance of a writ of *certiorari* and nullify its findings on the ground that these were made in excess of jurisdiction.

All told, the presence or absence of the elements of the crime charged and the validity of a party's defense or accusation, as well as the admissibility of testimonies and other documentary proof, are matters best passed upon during a full-blown trial on the merits.⁵⁸ Hence, Sombero's assertions anchored on the absence of some elements of the crime charged are better ventilated during trial and not during preliminary investigation.

⁵⁶ 264 Phil. 593-637 (1990).

⁵⁷ *Galario v. Ombudsman*, supra note 48.

⁵⁸ *Estrada v. Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018.

WHEREFORE, the present petition is **DISMISSED** for lack of merit. The Consolidated Resolution dated October 23, 2017 and Consolidated Order dated November 23, 2017 of the Office of the Ombudsman are hereby **AFFIRMED**.

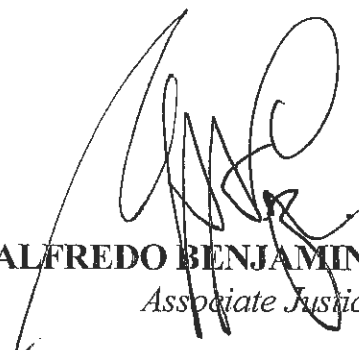
Acting on the Urgent Motion for Provisional Release from Detention due to COVID-19 dated April 15, 2020 of petitioner Wenceslao A. Sombero, Jr., the Court **RESOLVES** to **REFER** the same to the Sandiganbayan where petitioner's case docketed as SB-18-CRM-0241 is pending, for appropriate action.

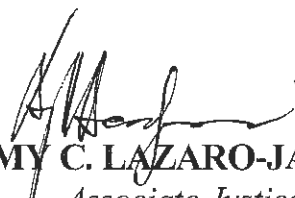
SO ORDERED.

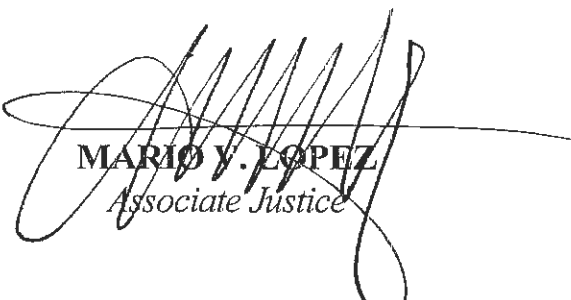

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice
Chairperson

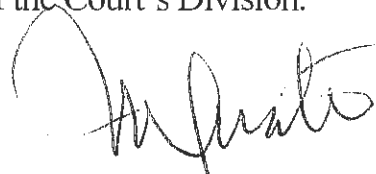

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


MARIO Y. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice

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