

Mis-DCBatt  
 MISAMIL DOMINGO C. BATTUNGIE  
 Division Clerk of Court  
 Third Division

MAR 23 2021



Republic of the Philippines  
 Supreme Court  
 Manila

## THIRD DIVISION

GIL G. CHUA,

Petitioner,

G.R. No. 202004

Present:

LEONEN, J.,

*Chairperson,*

HERNANDO,

INTING,

DELOS SANTOS, and

ROSARIO, JJ.

-versus-

CHINA  
CORPORATION,

BANKING

Promulgated:

Respondents.

November 4, 2020

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## DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*<sup>1</sup> assails the November 10, 2011 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 116595, which granted respondent China Banking Corporation's (China Bank) Petition for *Certiorari* and *Mandamus* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction<sup>3</sup> under Rule 65 of the Rules of Court questioning the lifting of the writ of attachment by the Regional Trial Court (RTC), as well as the May 16, 2012 Resolution<sup>4</sup> denying petitioner Gil G. Chua's (Chua) Motion for Reconsideration.<sup>5</sup>

The facts, as culled from the records, are as follows.

\* On leave.

<sup>1</sup> *Rollo*, pp. 13-32.

<sup>2</sup> *Id.* at 33-46; penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Noel G. Tijam (now retired Supreme Court Associate Justice) and Marlene Gonzales-Sison.

<sup>3</sup> *CA rollo*, pp. 3-37.

<sup>4</sup> *Rollo*, pp. 48-49.

<sup>5</sup> *CA rollo*, pp. 284-292.

On several occasions, Interbrand Logistics & Distribution, Inc.,<sup>6</sup> (Interbrand) represented by its duly authorized officer, Almer L. Caras (Caras), applied with China Bank for the issuance of Domestic Letters of Credit (L/C) for the purchase of goods from Nestlé Philippines. Accordingly, twelve (12) L/Cs with corresponding trust receipts were issued to Interbrand. By the terms of the trust receipts, Interbrand agreed to hold the goods in trust for China Bank. Pursuant to the L/Cs, China Bank advanced the amount of ₱189,831,288.17 in full payment of the invoice value of said goods. The goods were all delivered to Interbrand's warehouses in Libis, Quezon City, Tarlac City, and Meycauayan, Bulacan. Due to advances made by China Bank, the parties jointly executed two Surety Agreements whereby in the first Agreement, Interbrand and its officers, Chua, Carlos Francisco Mijares (Mijares), and Caras served as sureties; while Edgar San Luis (San Luis) was the individual surety in the second Agreement.<sup>7</sup>

When the obligation became due, Interbrand failed to pay China Bank despite repeated demands. China Bank likewise demanded payment from the sureties, including Chua, but the latter failed and refused to pay.<sup>8</sup>

On March 1, 2010, China Bank filed a Complaint for Sum of Money and Damages with Application for Issuance of Writ of Preliminary Attachment<sup>9</sup> against Chua and the other sureties before the RTC of Makati City, Branch 59. China Bank averred that Interbrand, with knowledge and consent of Chua and other individuals as officers of the company, had committed acts of fraud, deceit and gross bad faith in contracting their indebtedness from China Bank, with manifest intention not to comply in good faith with their respective obligations both in the trust receipts and in the surety agreements.

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

On March 3, 2010, the trial court issued an Order<sup>10</sup> granting the application for issuance of a Writ of Preliminary Attachment. The dispositive portion reads:

WHEREFORE, as prayed for and upon plaintiff's posting of a bond fixed at PhP189,831,288.17 subject to the approval of this Court, let a Writ of Preliminary Attachment issue directing the Branch Sheriff of this Court to attach all the properties, real or personal, of the defendants Interbrand Logistics and Distribution, Inc. with principal office located at #62 11th Avenue, Cubao, Quezon City; Almer L. Caras located in #2 Banaba Street corner Narra Avenue, Mapayapa Village, Libis, Quezon City; **Gil G. Chua located in #4 Red Arrow Street, White Plains Subdivision, Quezon City**; Carlos Francisco S. Mijares located in #23 Pikadon Street, Midtown Subdivision, San Roque, Marikina City; Edgar S. San Luis located in #3 Troy Street, Acropolis Village, Quezon

<sup>6</sup> Formerly Publicis Interbrand, Inc.

<sup>7</sup> *Rollo*, pp. 34-35.

<sup>8</sup> *Id.* at 35.

<sup>9</sup> *Id.* at 384-400.

<sup>10</sup> *Id.* at 401-402; penned by Presiding Judge Winlove M. Dumayas.

City or anywhere in the Philippines, not exempt from execution or so much thereof as may be sufficient to satisfy plaintiff's demand for PhP189,831,288.17 plus attorney's fees, unless the defendants make a deposit or give a counterbond in an amount sufficient to satisfy such demands, besides costs, or in an amount equal to the value of the properties which are about to be attached. The condition of the plaintiff's bond is such that it shall answer for all the costs and damages which the defendants Interbrand Logistics and Distribution, Inc. Almer L. Caras, **Gil G. Chua**, Carlos Francisco S. Mijares and Edgar S. San Luis may sustain by reason of the attachment, if the court shall finally adjudge that the plaintiff is not entitled thereto. In the event defendants make deposit or give a counterbond as stated above, the same shall be conditioned to secure payment to the plaintiff of any judgment which it may recover in this action.<sup>11</sup> (Emphasis ours)

Chua and the other sureties filed a Motion to Lift Writ of Attachment,<sup>12</sup> alleging that they are not debtors, thus should not be guilty of fraud in incurring the obligation. Chua filed a Supplement to the Motion to Lift the Writ of Attachment arguing that he is neither an officer, director nor a stockholder of Interbrand. Consequently, the trial court lifted the writ of attachment against petitioner in an Order<sup>13</sup> dated May 21, 2010. China Bank filed a Motion for Reconsideration.<sup>14</sup> It presented the Minutes of the Special Meeting of the Board of Directors of Interbrand<sup>15</sup> which shows that petitioner was one of the directors of Interbrand who approved the authority of its President, San Luis, and CFO-Director Caras to obtain loans from and sign trust receipt and loan documents with China Bank. China Bank likewise presented a copy of the Amended Articles of Incorporation<sup>16</sup> adopted on July 9, 2005 which indicated petitioner as one of the incorporators. Moreover, China Bank argued that Chua admitted in his Answer that he executed the Surety Agreement. The trial court did not give credence to the documents presented by China Bank because none of these documents indicated that during the period material to the case, from September to December 2009, Chua was still a stockholder and director of Interbrand.

### **Ruling of the Court of Appeals:**

China Bank filed a Petition for *Certiorari* and *Mandamus* with Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction<sup>17</sup> with the CA. On November 10, 2011, the CA rendered a Decision<sup>18</sup> granting the petition and reinstating the March 3, 2010 Order which directed the branch sheriff to attach the properties of Chua. The appellate court noted that Chua voluntarily signed the Surety Agreement and his liability therein is not limited during his incumbency as an officer and stockholder of Interbrand. The appellate court opted not to tackle the issue on

<sup>11</sup> Id.

<sup>12</sup> Id. at 403-406.

<sup>13</sup> Id. at 412-416.

<sup>14</sup> Id. at 417-422.

<sup>15</sup> Id. at 423.

<sup>16</sup> Id. at 424-430.

<sup>17</sup> CA rollo, pp. 3-37.

<sup>18</sup> Rollo, pp. 33-46.

fraud because it would be tantamount to ruling on the merits. Chua moved for reconsideration but it was denied by the CA in its May 16, 2012 Resolution.<sup>19</sup>

Chua filed the instant Petition for Review on *Certiorari*<sup>20</sup> challenging the ruling of the CA. He claims that the appellate court violated his right to due process when the latter disregarded his evidence to support the lifting of the writ of attachment and finding that he voluntarily signed the surety agreement. Chua contends that when the appellate court held that the trial court committed grave abuse of discretion when it lifted the writ of preliminary attachment, it was in effect making his liability as surety conditional on his being a director, officer or a stockholder, without taking into consideration whether fraud attended the incurrance of the obligation. Finally, Chua asserts that the remedy from the order lifting the writ of attachment is not through a writ of *certiorari* but may be corrected only by appeal.<sup>21</sup>

In China Bank's Comment,<sup>22</sup> it maintains that under the surety agreement, Chua became obligated to perform the obligation and duty of Interbrand in the trust receipts even without possessing a direct or personal interest in the obligations constituted by the latter and despite the fact that Chua is not a signatory in the trust receipts. China Bank adds that the obligation of Chua being direct, primary and absolute, it was as if he personally bound himself to fulfill all and any other obligations of Interbrand in the trust receipt agreements in favor of China Bank. China Bank asserts that fraud was manifested on the part of Chua when he, as a surety, was fully aware of his obligations to remit to China Bank the sale proceeds described in the trust agreement, but he did not have the intention to pay China Bank the proceeds. China Bank adds that mere failure to comply with the trust receipt obligation is a crime.<sup>23</sup>

### Issue

The issue for our resolution concerns only the propriety of the attachment on the properties of Chua.

### Our Ruling

A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the

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<sup>19</sup> Id. at 48-49.

<sup>20</sup> Id. at 13-32.

<sup>21</sup> Id.

<sup>22</sup> Id. at 108-130.

<sup>23</sup> Id.

property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.<sup>24</sup>

Under Sections 12<sup>25</sup> and 13,<sup>26</sup> Rule 57 of the Rules of Court, there are two ways to secure the discharge of an attachment, as mentioned by the CA. First, the party whose property has been attached or a person appearing on his/her behalf may post a security. Second, said party may show that the order of attachment was improperly or irregularly issued.<sup>27</sup> In this case, Chua successfully had the attachment against him initially discharged on the second ground.

China Bank's basis in applying for the writ of preliminary attachment is Section 1(d), Rule 57 of the Rules of Court, *i.e.*, "[i]n 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." Section 3<sup>28</sup> of the same rule requires that an affidavit of merit be issued alleging the following facts: (1) that a sufficient cause of action exists; (2) that the case is one of those mentioned in Section 1 hereof; (3) that there is no other sufficient security for the claim sought to be enforced by the action; and (4) that the amount due to the applicant, or the value of the property the

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<sup>24</sup> *Security Bank Corporation v. Great Wall Commercial Press Company, Inc.*, 804 Phil. 565, 573 (2017), citing *Republic v. Mega Pacific eSolutions, Inc.*, 788 Phil. 160, 185 (2016).

<sup>25</sup> Section 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 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.

<sup>26</sup> Section 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 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.

<sup>27</sup> *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 620-621 (2005).

<sup>28</sup> Section 3. *Affidavit and bond required.* — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.

possession of which he/she is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.<sup>29</sup>

Contrary, however, to the declaration of the CA, there must be a showing of fraud, at least on the allegations in the application for writ of preliminary attachment.

To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he/[she] would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay. x x x

The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.<sup>30</sup> (Citations omitted)

In the Joint Affidavit executed by the officers of China Bank, the following pertinent allegations were made to substantiate the application for a writ of preliminary attachment:

5. In the discharge of our duties, we have encountered and/or processed the accounts of defendants INTERBRAND LOGISTICS & DISTRIBUTION, INC., Almer L. Caras, Gil G. Chua, Carlos Francisco S. Mijares, and Edgar San Luis, wherein:

[5].a. On several occasions, defendant INTERBRAND, thru its duly authorized officers, defendant Almer L. Caras, applied in writing with plaintiff for the issuance of domestic Letters of Credit (L/C) for the purchase of goods described therein from Nestle Philippines, Inc. (NESTLE, for short). Plaintiff approved these applications and accordingly issued domestic Letters of Credit; x x x

[5].b. In consideration of and as agreed by plaintiff and defendants in said Letters of Credit (L/Cs), plaintiff financed in the ordinary course of its banking business the purchase by defendant INTERBRAND of the goods described in said L/Cs from the supplier, NESTLE, by advancing for INTERBRAND's account the total principal amount of ₱189,831,288.17, Philippine currency, in full payment of the total invoice value of said goods. Such advance payments by plaintiff are duly evidenced by bank drafts drawn for and accepted by defendant INTERBRAND, through defendant Almer L. Caras, upon presentment with stamps, expenses and charges duly paid.

[5].c. Contemporaneously and/or in connection with the preceding transactions, defendant INTERBRAND executed Trust Receipt Agreements, x x x the obligations of defendant INTERBRAND and/or defendant Almer L. Caras of which are specified therein as follows:

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<sup>29</sup> *Watercraft Venture Corporation v. Wolfe*, 769 Phil. 394, 408-409 (2015).

<sup>30</sup> *Metro Inc. v. Lara's Gifts and Decors, Inc.*, 621 Phil. 162, 170 (2009), citing *Liberty Insurance Corporation v. Court of Appeals*, 294 Phil. 41, 49-50 (1993).

(i) Sell or procure the sale of goods, or to manufacture/process the same with the ultimate purpose of sale, and to remit to plaintiff the proceeds thereof, at the latest on or before the maturity dates of said trust receipts;

(ii) In case of non-sale, defendants must return said goods invariably on or before the maturity dates of the trust receipts, and

(iii) Defendants must account to plaintiff for the goods received in trust for the latter and/or the proceeds of the sale thereof, if any, on or before the maturity dates of the trust receipts;

[5].d. Furthermore, defendant INTERBRAND as PRINCIPAL, and defendants Gil G. Chua, Carlos Francisco S. Mijares, Almer L. Caras and Edgar S. San Luis as Sureties, executed Surety Agreements dated April 24, 2008 and May 22, 2008 x x x wherein they jointly and severally bound and obligated themselves to pay in full plaintiff their trust receipt obligations on or before the respective maturity dates of the trust receipts;

[6]. In January 2010, defendants failed to pay their trust receipt obligations. Despite their request, plaintiff did not grant defendants a 60-day extension of the maturity dates of their trust receipts. Also, despite demands, defendants also failed to comply with their obligations in the Surety Agreements x x x whereby they obligated and undertook themselves to pay all the trust receipt obligations of defendant INTERBRAND;

[7]. Because of this, plaintiff thru its account officers conducted an investigation/inquiry on the underlying causes of the default of defendants on their respective obligations as stated above. As shown by the Letters of Credit, the Nestle products purchased by defendant INTERBRAND are among others, Bearbrand Milk, Milo and Nescafe items. These are known to be basic and prime commodities. As such, they are highly saleable because they are known to be consumed daily by customer.

[8]. When letters of credit were opened in behalf of defendants and for the benefit of Nestle Phils[.], Inc. as the supplier of the goods, these goods were to be delivered to the warehouses of INTERBRAND in McArthur Highway, Block 9, Tarlac City, Cagayan Valley Road 346, Sta. Rita, Guiguinto, Bulacan and Libis, Quezon City as stated in the Sales Invoices. Being saleable products, the proceeds of the sale of these products could be and were collected by the sales agents of INTERBRAND from their customers in a matter of 2 weeks. Since Interbrand could collect the proceeds of the sale in approximately 2 weeks, it should have, and was in fact obliged under the trust receipts to immediately remit such payments or proceeds to plaintiff such being its trust receipt obligation as stated in par. [5].c above. This is so because plaintiff financed and/or advanced the payment of the invoice value of said products for INTERBRAND;

[9]. Despite collection of said sale proceeds, defendants deliberately failed to make the aforesaid remittance to plaintiff. Instead, defendants INTERBRAND and Almer L. Caras, with the knowledge and consent of the other defendants, misappropriated the sale proceeds for their benefit and satisfaction to the extreme damage of plaintiff. Such constituted the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code;

[10]. Also, instead of delivering the goods/Nestle products to the warehouses of defendants INTERBRAND in Libis, Quezon City, Tarlac City and Meycauayan, Bulacan, we discovered that defendants caused/allowed/facilitated the delivery of the goods covered by the Letters of Credit and Sales Invoices mentioned above to a warehouse located at Oliveros Drive, Quezon City;

[11]. Upon ocular inspection of said warehouse in Oliveros Drive, Quezon City, the security guard stationed therein and whom we talked to revealed to us that said warehouse is not owned by defendant INTERBRAND

as shown by the fact that the goods existing therein were Belo Cosmetic items and Datu Puti Products, not Nestle products;

[12]. Because of this deliberate diversion in the delivery of the Nestle products covered by the Letters of Credit to a location different from the warehouses of defendant INTERBRAND, plaintiff, in the process was prevented from monitoring the circumstances by which INTERBRAND was supposed to utilize the same goods to make sure that defendants would be able to comply with their obligations in the trust receipts;

[13]. The foregoing circumstances obviously indicate that defendants did not actually have the honest intention to faithfully comply with their trust receipt obligations. The real intention of defendants was not to turn over the proceeds of the sale of the Nestle products to plaintiff, but to misappropriate the same to the unlawful satisfaction and benefit of the defendants[;]

[14]. Defendants are obviously guilty of fraud in contracting their obligations/indebtedness with plaintiff, hence, the latter is lawfully entitled to the issuance of the Writ of Preliminary Attachment under Rule 57, Section 01 of the Revised Rules of Court.<sup>31</sup>

A perusal of the allegations in the affidavit reveals fraud in the violation of trust receipt agreements. According to China Bank, it advanced a total of P189 Million as payment for the goods of Nestlé in favor of Interbrand. These goods are considered highly saleable thus they naturally expected immediate and regular remittance of the sales proceeds. However, instead of remitting the sales proceeds to China Bank, Interbrand misappropriated the same by deliberately diverting the delivery of the goods covered by the L/Cs to a location different from that indicated in the sales invoice. This act of misappropriation demonstrates a clear intent of fraud.

Chua, having signed the surety agreement, bound himself to jointly and solidarily fulfill the obligation of Interbrand to China Bank. The question of whether he was an officer and stockholder at the time when the Complaint for Sum of Money with Application for Writ of Attachment was filed was raised by petitioner and considered by the trial court in lifting the writ of attachment against him. We hold that such finding would necessarily delve into the merits of the case as China Bank seeks to hold petitioner and other sureties liable under the Suretyship Agreements.

Suffice it to say that on the face of the allegations, the issuance of a writ of preliminary attachment is regular and proper. Thus, we agree with the CA in reinstating the March 3, 2010 Order directing the issuance of a writ of attachment against the properties of Chua.

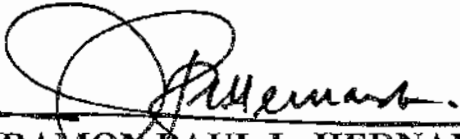
**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The November 10, 2011 Decision and the May 16, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116595 are **AFFIRMED**.

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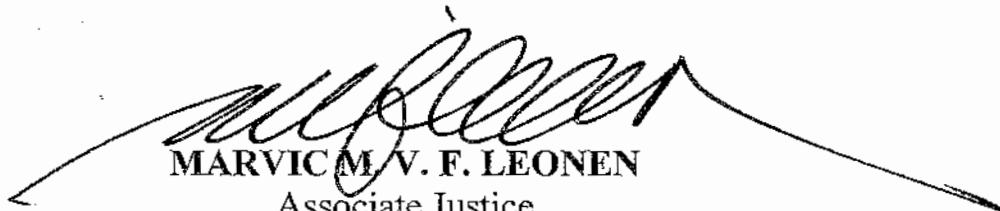
<sup>31</sup> *Rollo*, pp. 381-383.




**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

  
**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson

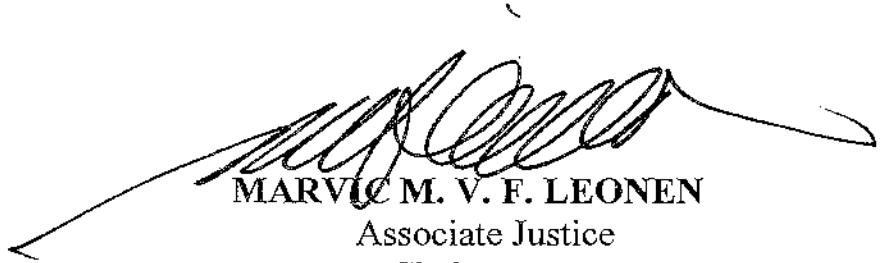
  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**RICARDO R. ROSARIO**  
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.



**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson

**CERTIFICATION**

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



**DIOSDADO M. PERALTA**  
Chief Justice

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*MisBDCBatt*  
**MICHAEL DOMINICO C. BATTUNGUE**  
Division Clerk of Court  
Third Division  
MAR 23 2021