Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEDRITO R. PARAYDAY and JAIME REBOSO,
Petitioners,

- *versus* -

SHOGUN SHIPPING CO., INC.,[1]
Respondent.

G.R. No. 204555

Present:

PERLAS-BERNABE, *J.*,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
GAERLAN,* *JJ.*

Promulgated:
06 JUL 2020

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[2] assails the May 11, 2012 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 112075, which set aside the August 28, 2009 Decision[4] and October 27, 2009 Resolution[5] of the National Labor Relations Commission (NLRC) declaring herein petitioners Pedrito R. Parayday (Parayday) and Jaime Reboso (Reboso) to have been illegally dismissed from employment. In a November 19, 2012 Resolution,[6] the CA refused to reconsider its earlier Decision.

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* Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.
[1] Properly referred to as Shogun Ships Inc. *See* Articles of Incorporation (*Rollo*, pp. 187-201).
[2] *Rollo*, pp. 12-60.
[3] *Id.* at 61-74; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez.
[4] *Id.* at 107-117; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.
[5] *Id.* at 119-120.
[6] *Id.* at 365.

Antecedent Facts

This case stemmed from a complaint [7] for illegal dismissal and regularization, underpayment of wages, overtime pay, rest day pay, holiday pay, holiday premium, service incentive leave (SIL), thirteenth (13th) month pay, and night shift differential pay, and claims for moral and exemplary damages, and attorney's fees filed by Parayday and Reboso against respondent Shogun Shipping Co., Inc.[8] (Shogun Ships), and Vicente R. Cordero (Cordero) and Antonio "Nonie" C. Raymundo (Raymundo), President and Vice-President, respectively, of Shogun Ships.

Petitioners Parayday and Reboso alleged that they were employed sometime in October 1996 and March 1997, respectively, as fitters/welders by Oceanview/VRC Lighterage Co., Inc., and VRC/Oceanview Shipbuilders Co., Inc. (collectively referred to as "Oceanview"), corporations engaged in the business of ship building. As fitters/welders, petitioners' duties and responsibilities included, among others, assembling, welding, fitting, and installing materials or components using electrical welding equipment, and/or repairing and securing parts and assemblies of Oceanview barges.[9] In support of their allegation that they were employees of Oceanview, petitioners presented a copy of Parayday's Oceanview Identification Card (ID),[10] and Certificate of Employment (COE) dated February 5, 2001.[11]

Sometime in 2003, Oceanview changed its corporate name to "Shogun Ships Inc.," herein respondent. Shogun Ships maintained the same line of business, and retained in its employ Oceanview employees, such as petitioners.

In the course of their employment with Oceanview and later with Shogun Ships, petitioners worked for seven days every week, and were paid a daily salary of Three Hundred Fifty Pesos (₱350.00) until their separation from employment with Shogun Ships sometime in May 2008. Petitioners alleged that Shogun Ships furnished to them handwritten payslips or Time Keeper's Reports which indicated their names, the hours and days worked, and the amount of compensation received by them in a given workweek.[12] Petitioners further alleged that Shogun Ships failed to pay them their overtime pay, holiday pay, and premium pay despite having rendered work during holidays, Sundays, and rest days. Shogun Ships likewise did not pay petitioners their SIL and 13th month pay.

Sometime in May 2006, petitioners were assigned to Lamao, Limay, Bataan to do a welding job on one of the barges of Shogun Ships, M/T Daniela Natividad. On May 11, 2006, an explosion occurred which caused petitioners

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[7] CA *rollo*, pp. 88-89 and 91.
[8] *See* note 1.
[9] CA *rollo*, p. 84.
[10] *Id.* at 173.
[11] *Id.* at 90.
[12] *Id.* at 96-99.

to sustain third degree burns on certain parts of their bodies. Petitioners were then hospitalized from May 11, 2006 until June 6, 2006. Although medical expenses were borne by Shogun Ships, petitioners were not paid their salaries while on hospital confinement. It was only on June 7, 2006, or after petitioners were discharged from the hospital, that Shogun Ships resumed payment of their salaries until the first week of August 2006. Thereafter, Shogun Ships discontinued providing petitioners financial assistance for payment of their medical expenses.

Petitioners alleged that subsequently the management of Shogun Ships verbally dismissed them from service effective May 1, 2008 due to lack of work as fitters/welders.

On its part, respondent denied outright that petitioners were engaged by Shogun Ships as regular employees. In support of its claim that no employer-employee relationship existed between Shogun Ships and petitioners, respondent pointed out that Shogun Ships, which is a corporation engaged in the business of domestic cargo shipping, was only incorporated sometime in November 2002,[13] several years after petitioners were engaged by Oceanview as its fitters/welders in 1996/1997. Anent petitioners' allegation of change of corporate name of Oceanview to Shogun Ships, respondent maintained that there was no such change of corporate name and that Oceanview was a separate and distinct entity from Shogun Ships.

Respondent alleged that, at best, petitioners were helpers brought in by regular employees of Shogun Ships on certain occasions when repairs were needed to be done on its barges. Respondent clarified that the regular employees of Shogun Ships occasionally called in their friends and nearby neighbors, such as petitioners, who were seeking temporary work as helpers until such time the needed repairs on the barges were carried out or completed. Shogun Ships compensated them for services rendered since the work done by these helpers were for the necessary repairs of its barges. Shogun Ships, however, did not engage them on a regular basis since their work on the barges was merely temporary or occasional. Moreover, Shogun Ships already had in its employ regular employees for its technical, mechanical, and electrical needs. Concomitantly, helpers were free to seek employment elsewhere at any given time.

To lend credence to respondent's claim that petitioners were merely occasionally engaged by employees of Shogun Ships with the view of helping petitioners earn additional income, respondent presented the sworn statements and affidavits[14] of Lito C. Panao and Virgilio Soriano, Jr., Shogun Ships' Vessel Materials Coordinator and Warehouseman, respectively.

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[13] *Id.* at 124-128.
[14] *Id.* at 122-123.

Sometime in 2008, the regular employees of Shogun Ships ceased calling helpers to work on the repairs of the barges since they could already be completed without the helpers' assistance. It was during this time that petitioners started demanding work from Shogun Ships, which the latter could not provide as there was no work to be done on the barges.

Ruling of the Labor Arbiter

On April 27, 2009, Labor Arbiter Eduardo G. Magno promulgated a Decision,[15] the dispositive portion of which states:

> **WHEREFORE,** Respondent Shogun Ships Co., Inc. is hereby ordered to reinstate complainants Pedrito R. Parayday and Jaime Reboso to their former position without loss of seniority rights with full backwages from time of dismissal until fully reinstated.
>
> The computation of backwages from date of dismissal until date of this decision is as follows:
>
> PEDRITO R. PARAYDAY - ₱108,150.00 and
> JAIME REBOSO - ₱108,150.00
>
> The claims for underpayment of wages and benefit are hereby denied for lack of factual basis.
>
> The claim for damages and attorney's fees are likewise denied for lack of factual basis.
>
> **SO ORDERED.**[16]

The Labor Arbiter held that petitioners were regular employees of Shogun Ships considering that they: (1) performed tasks necessary and desirable to its business; and (2) rendered more than one year of service at the time of their dismissal from employment. On the issue of illegal dismissal, the Labor Arbiter ruled in favor of petitioners and held that respondent failed to prove that petitioners were dismissed for just or authorized cause and that they were afforded procedural due process. In computing the amount of petitioners' backwages, the Labor Arbiter took into consideration petitioners' years of service not only with Shogun Ships, but also with its predecessor, Oceanview.

Ruling of the National Labor Relations Commission

In its appeal[17] to the NLRC, respondent averred that the Labor Arbiter committed serious error amounting to grave abuse of discretion in finding that petitioners were regular employees of Shogun Ships, and that petitioners were illegally dismissed from employment. Respondent mainly contended that using the four-fold test, petitioners cannot be considered as employees of Shogun Ships. Respondent also argued that the Labor Arbiter erred in ruling that Shogun

[15] *Id.* at 54-58.
[16] *Id.* at 57-58.
[17] *Id.* at 174-193.

Ships is one and the same entity as Oceanview, since Shogun Ships, unlike Oceanview which is engaged in ship building, is engaged in the business of domestic cargo shipping. Respondent added that the petitioners' functions as fitters/welders cannot be regarded as necessary and desirable to the business of cargo shipping as its barges are not consistently in a state of disrepair. As petitioners are not employees of Shogun Ships, respondent insisted that no dismissal ever took place, much more any illegal dismissal.

In its August 28, 2009 Decision,[18] the NLRC dismissed the appeal and affirmed the findings of the Labor Arbiter that petitioners were regular employees of Shogun Ships and that they were illegally dismissed from employment. The dispositive of the Decision states, as follows:

> **WHEREFORE**, premises considered, the appeal from the Decision dated April 27, 2009 is hereby DISMISSED for lack of merit.
>
> **SO ORDERED.**[19]

The NLRC took note of petitioners' allegations that after the May 11, 2006 explosion, they continued to render their services to Shogun Ships and even reported back for work in August 2006, which respondent did not categorically deny in its pleadings. Thus, even when their date of engagement with Shogun Ships was counted from the date of the incident, it would appear that petitioners have already rendered more than one year of service with Shogun Ships when they were purportedly dismissed from employment on May 1, 2008. On this premise, the NLRC held that the repeated and continuing need of petitioners' services as fitters/welders was sufficient evidence of the necessity if not indispensability of their functions, thus making them regular employees of Shogun Ships.

The NLRC also did not lend credence to the affidavits of Lito C. Panao and Virgilio Soriano, Jr. for the reason that they were biased witnesses.

On the issue of illegal dismissal, the NLRC affirmed the findings of the Labor Arbiter and held that respondent failed to prove that petitioners were dismissed for just or authorized cause.

Ruling of the Court of Appeals

Aggrieved, respondent filed a Petition for *Certiorari*[20] (with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction when it held that petitioners were employees of Shogun Ships and that they were illegally dismissed from employment.

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[18] *Rollo,* pp. 107-117.
[19] *Id.* at 116.
[20] CA *rollo,* pp. 3-30.

In their Comment[21] to respondent's Petition for *Certiorari*, petitioners averred that the application of the four-fold test proved that they were employees of Shogun Ships. Petitioners also contended that their employment arrangement with Shogun Ships, *i.e.*, on a "per need" basis, was formulated to prevent them from acquiring regular employment status. Petitioners also harped on the supposed insufficiency of documentary evidence furnished by respondent which merely consisted of a copy of Shogun Ships' Certificate of Incorporation. Petitioners also claimed reinstatement and payment of their backwages and other monetary claims, including damages and attorney's fees.

In compliance with its July 8, 2010 Resolution,[22] the parties filed their respective memoranda[23] with the CA.

On May 11, 2012, the CA rendered its assailed Decision[24] granting respondent's Petition for *Certiorari* and setting aside the August 28, 2009 Decision and October 27, 2009 Resolution of the NLRC. The dispositive portion of the May 11, 2012 Decision reads as follows:

> **WHEREFORE**, the petition is GRANTED. [sic] Setting aside the NLRC's Decision dated August 28, 2009 and Resolution dated October 27, 2009, the complaint for illegal dismissal and other money claims is consequently dismissed.
>
> **SO ORDERED.**[25]

The CA concluded that petitioners failed to adduce substantial evidence to prove the existence of an employer-employee relationship between them and Shogun Ships. Considering the same, the CA held that there was no dismissal to speak of, much more any illegal dismissal.

While it took note of petitioners' Time Keeper's Reports which supposedly indicated that they have been reporting for work for seven days a week, the CA gave them no credence considering petitioners' failure to establish their genuineness and due execution. The CA also found that the records of the case were bereft of evidence which would prove that petitioners were continuously employed by Shogun Ships.

Additionally, the CA held that petitioners failed to prove that Oceanview were one and the same entity as Shogun Ships. The appellate court explained in this wise, *viz.*:

> We have to stress, at this point, that a corporation has a personality separate and distinct from those of its stockholders and other corporations to

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[21] *Id.* at 236-272.
[22] *Id.* at 273.
[23] *Id.* at 281-316.
[24] *Rollo*, pp. 61-74.
[25] *Id.* at 74.

> which it may be connected. We cannot assume that the above-named companies are one and the same. Neither are we prepared to "pierce the veil of corporate fiction" as said doctrine comes into play "only during the trial of the case after the court has already acquired jurisdiction over the corporation," matters which are not present here. Worse, to apply such doctrine, it is important that the obtaining facts be properly pleaded and proved, *i.e.,* after conducting a hearing during a full-blown trial, a matter which equally is not true here. Besides, the piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice.[26] (Citations omitted)

Petitioners filed a motion for reconsideration[27] but the CA denied the same in its November 19, 2012 Resolution.[28] Hence, the instant Petition.

Issues

Petitioners raised the following issues for resolution:

> I
>
> THE [CA] SERIOUSLY ERRED IN FINDING THE TIME KEEPER'S REPOTS SUBMITTED BY THE PETITIONERS AS INSUFFICIENT EVIDENCE OF ESTABLISHING THEIR CONTINUOUS EMPLOYMENT WITH THE RESPONDENTS ON THE GROUND THAT THEIR GENUINENESS AND DUE EXECUTION WERE NOT ESTABLISHED.
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> II
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> THE [CA] SERIOUSLY ERRED IN RELYING ON THE BARE ASSERTION OF THE RESPONDENTS THAT PETITIONERS WERE MERELY "OCCASIONALLY CALLED IN" TO SERVE AS HELPERS.
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> III
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> THE [CA] SERIOUSLY ERRED IN AVOIDING TO PIERCE THE CORPORATE VEIL, ALLEGING A FULL[-]BLOWN TRIAL HAS TO BE HAD, NOTWITHSTANDING THAT IT WAS PROPERLY PLEADED AND PROVED BY THE PETITIONERS.
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> IV
>
> THE [CA] ERRED IN ENTERTAINING AND GRANTING RESPONDENTS' PETITION FOR CERTIORARI UNDER RULE 65.
>
> [V]
>
> THE [CA] SERIOUSLY ERRED IN IGNORING THE NOTICE OF CHANGE OF COUNSEL WHEN IT RECOGNIZED THE COUNSEL WHO HAS NO AUTHORITY FROM PETITIONERS.

For brevity and clarity, the issues of the instant case may be simplified as follows: (1) whether petitioners were regular employees of Shogun Ships; and (2) whether petitioners were validly dismissed from employment.

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[26] *Id.* at 73.

[27] CA *rollo*, pp. 347-360.

[28] *Rollo*, p. 406.

Our Ruling

The Court grants the Petition.

Preliminary Matters

The issue of whether or not an employer-employee relationship existed between petitioners and Shogun Ships is essentially a question of fact.

At the outset, as to whether or not petitioners were regular employees of Shogun Ships, or whether or not an employer-employee relationship existed between petitioners and Shogun Ships, are essentially questions of fact[29] which, as a rule, cannot be entertained in a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court. Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[30] However, where, like in the instant case, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on one hand, and those of the CA, on the other hand, it becomes proper for this Court, in the exercise of its equity jurisdiction, to review the facts and re-examine the records of the case.[31] Thus, this Court shall take cognizance of and resolve the factual issues involved in this case.

Shogun Ships and Oceanview are two separate and distinct entities.

As a preliminary to a determination of the first issue, *i.e.,* whether petitioners were regular employees of Shogun Ships, petitioners contend that they were employed by Oceanview as far back as 1996/1997. Sometime in 2003, Oceanview supposedly changed its corporate name to Shogun Ships, herein respondent. Petitioners would thus make it appear that Oceanview and Shogun Ships are one and the same entity, which conveniently makes them employees of Shogun Ships since 1996/1997, or for a period of 11 years until they were dismissed from employment on May 1, 2008. Along the same lines, the Labor Arbiter, in his Decision, categorically held that Oceanview is the predecessor of Shogun Ships.

Notably, the contention of petitioners would support the conclusion that an employer-employee relationship indeed existed between petitioners and Shogun Ships based on the following premises: (1) that petitioners were engaged as fitters/welders by Shogun Ships through Oceanview; and (2) that petitioners were rendering their services to Oceanview, now Shogun Ships, as early as 1996/1997 or for a period of 11 years until their dismissal from employment on May 1, 2008.

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[29] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236 (2012).
[30] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission,* 540 Phil. 65, 74-75 (2006).
[31] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 790 (2015).

In its Decision, the CA held that it cannot assume that Oceanview and Shogun Ships are one and the same since the two corporations have personalities that are separate and distinct from each other and, as such, must be taken distinctly and separately from one another. Moreover, the CA refused to apply the doctrine of piercing the veil of corporate fiction in the absence of a full-blown trial where facts pertaining thereto are properly pleaded and proved, and for lack of jurisdiction over Oceanview.

Petitioners, in asking this Court to treat Oceanview and Shogun Ships as one entity, insisted that the obtaining facts which would justify the application of piercing the veil of corporate fiction, *i.e.*, that Oceanview changed its corporate name to Shogun Ships, have been properly pleaded and proved by petitioners during the proceedings before the Labor Arbiter and the NLRC.

The records, however, are bereft of evidence which would show that Shogun Ships was formerly known as Oceanview or that Oceanview changed its corporate name to Shogun Ships.

Other than their bare allegations, petitioners could have presented before the labor tribunals Oceanview's amended Articles of Incorporation indicating that it changed its name to Shogun Ships, which petitioners, however, failed to do in this case. Nor did petitioners present any evidence which would show Oceanview's corporate affiliation with Shogun Ships, *i.e.*, that Oceanview was indeed the predecessor of Shogun Ships. What is clear is that Shogun Ships was only incorporated in 2002, several years after petitioners were supposedly engaged by Oceanview in 1996/1997.

Considering the foregoing premises, this Court is inclined to agree with the respondent and the CA that Shogun Ships and Oceanview are indeed two separate and distinct corporate entities. This Court will thus apply the general doctrine of separate juridical personality – that a corporation has a legal personality separate and distinct from that of its stockholders and other corporations to which it may be connected.[32]

Moreover, it is a well-established rule in labor proceedings that the Labor Arbiter, or this Court for that matter, cannot acquire jurisdiction over the person of the respondent until he/she is validly served with summons, or that he/she voluntarily appears in court.[33] In this connection, this Court already ruled in *Kukan International Corporation v. Reyes*[34] that compliance with the modes of acquiring jurisdiction over the person of the defendant or respondent cannot be dispensed with in applying the doctrine of piercing the veil of corporate fiction, thus:

> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person

[32] *Concept Builders Inc. v. National Labor Relations Commission*, 326 Phil. 955, 964 (1996).
[33] *Dimson v. Chua*, 801 Phil. 778, 787 (2016).
[34] 646 Phil. 210 (2010).

> with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, **a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction**. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. x x x[35] (Emphasis supplied, citation omitted)

Moreover, this Court also held that "the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service."[36]

Otherwise stated, the above doctrine will only come into play once the court has already acquired jurisdiction over the corporation. Only then would it be allowed to present evidence for or against piercing the veil of corporate fiction. Thus, if the Labor Arbiter or the NLRC in this case have not acquired jurisdiction over the corporation, it would be improper for this Court to pierce the corporate veil as this would offend the corporation's right to due process.[37] In this case, it bears noting that Oceanview was never impleaded as a party respondent and was never validly served with summons. Nor was Oceanview represented by any authorized representative during the proceedings before the Labor Arbiter or the NLRC. It was merely dragged to the case by mere reference of its name in petitioners' *Sama-Samang Sinumpaang Salaysay.*[38]

Accordingly, this Court agrees with the CA that there was no full-blown trial as to the propriety of applying the said doctrine for the reason that Oceanview was never validly impleaded as a party respondent in the instant illegal dismissal case. Considering that this Court has not acquired jurisdiction over Oceanview, precisely because it was not properly impleaded herein as a party respondent, application of the said doctrine would be unwarranted.

On the issue of the existence of an employer-employee relationship

The proper resolution of this case necessarily hinges upon the existence of an employer-employee relationship. Necessarily, therefore, before a determination of legality or illegality of petitioners' dismissal can be had, the existence of an employment relationship between petitioners and Shogun Ships must be first established. *Sy v. Court of Appeals*[39] is instructive, *viz.*:

> Three issues are to be resolved: (1) Whether or not an employer-employee relationship existed between petitioners and respondent Sahot; (2)

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[35] *Id.* at 234.
[36] *Id.*
[37] *Pacific Rehouse Corporation v. Court of Appeals,* 730 Phil. 325, 344 (2014).
[38] CA *rollo,* pp. 84-87.
[39] 446 Phil. 404, 413 (2003).

> Whether or not there was valid dismissal; and (3) Whether or not respondent Sahot is entitled to separation pay.
>
> Crucial to the resolution of this case is the determination of the first issue. Before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. (Citation omitted)

This Court, in *Palomado v. National Labor Relations Commission,*[40] also held in this wise:

> An indispensable precondition of illegal dismissal is the prior existence of an employer-employee relationship; in this case, since it was established that there was no such relationship between petitioner and private respondent Tan, therefore the allegation of illegal dismissal does not have any leg to stand on. The claims for backwages, separation pay and other benefits must likewise fail.

It is thus first incumbent upon this Court to resolve whether petitioners were indeed employees of Shogun Ships. Without such fact of an employment relationship being established, as in this case where respondent has denied outright such fact, then it would be futile on the part of this Court to determine the legality or illegality of petitioners' dismissal.

Test in determining the existence of an employer-employee relationship

Both the Labor Arbiter and the NLRC ruled that petitioners were employees of Shogun Ships considering that their tasks as fitters/welders were necessary and desirable to its business of cargo shipping, and that both petitioners have been rendering their services to Shogun Ships for more than one year. In concluding that no employer-employee relationship existed between petitioners and Shogun Ships, the CA, on its part, applied the four-fold test in this wise:

> In determining the existence of an employer-employee relationship, the Supreme Court has invariably adhered to the four-fold test, *viz.:* (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," considered to be the most important element.
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> In this case, private respondents miserably failed to adduce substantial evidence to prove the existence of any of the aforementioned elements.[41]

To be clear, in determining the existence of an employer-employee relationship, this Court has time and again applied the "four-fold test" which has the following elements, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power to discipline and dismiss; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.[42]

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[40] 327 Phil. 472, 489 (1996).

[41] *Rollo*, pp. 70-71.

[42] *David v. Macasio*, 738 Phil. 293, 307 (2014).

By holding that petitioners were employees of Shogun Ships pursuant to their functions and years of service with it, the Labor Arbiter and the NLRC appeared to have invariably applied Article 295 (formerly Article 280) of the Labor Code, as amended, which states:

> Art. 295 (280). *Regular and Casual employment.* - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, **an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer**, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

From the foregoing recitals, Article 295 of the Labor Code merely distinguishes between certain kinds of employees, particularly, regular and casual employees, for purposes of determining their rights to certain benefits, such as to join or form a union, or to security of tenure.[43]

Moreover, an employer-employee relationship may cover peripheral or core activities of the employer's business. Thus, while a worker's task is not directly related, or necessary and desirable to the business of the employer, this does not mean, however, that no employer-employee relationship exists between the worker and the employer. Accordingly, the determination of the existence of an employer-employee relationship is defined by law according to the facts of each case, regardless of the nature of the activities involved.[44]

Article 295 should, therefore, not be used as a criterion to determine the existence of an employer-employee relationship. More importantly, the same provision does not apply where the existence of an employment relationship is in dispute.[45] The CA was therefore correct in applying the four-fold test in determining petitioners' employment status with Shogun Ships.

Petitioners are regular employees of Shogun Ships.

"In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However [as

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[43] *Abante Jr. v. Lamadrid Bearing & Parts Corporation*, 474 Phil. 415, 427 (2004).
[44] *Philippine Fuji Xerox Corp. v. National Labor Relations Commission*, 324 Phil. 553, 561 (1996).
[45] *Coca-Cola Bottlers Phils., Inc. v. National Labor Relations Commission*, 366 Phil. 581, 590 (1999), citing *Singer Sewing Machine Company v. Drilon*, 271 Phil. 282, 291 (1991). *See* also *Purefoods Corporation (now San Miguel Purefoods Co., Inc.) v. National Labor Relations Commission*, 592 Phil. 144, 150-151 (2008).

mentioned above], before a case for illegal dismissal can prosper, an employer-employee relationship must first be established."[46]

In this jurisdiction, each party must prove his affirmative allegation. Since petitioners' case against respondents was premised on the existence of an employment relationship between them and Shogun Ships, petitioners must prove by their own evidence that such an employer-employee relationship indeed existed.[47] While it has been held that no particular form of evidence is required to prove such relationship, or that any competent and relevant evidence to prove the relationship may be admitted,[48] this Court believes that a finding of such relationship must still rest on substantial evidence,[49] or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[50] This is in accordance with the oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence.[51]

In proving their employment relationship with Shogun Ships, petitioners presented the following documentary evidence: (1) photocopy of Parayday's Oceanview ID;[52] (2) photocopy of Parayday's COE dated February 5, 2001 issued by "Oceanview Shipbuilding Co., Inc.";[53] and (3) photocopy of handwritten payslips or Time Keeper's Reports.[54]

Significantly, Parayday's Oceanview ID and COE provides no evidentiary value that petitioners were indeed employees of Shogun Ships. A perusal thereof clearly shows that the same was issued by Oceanview, and not Shogun Ships. The documents presented do not even make reference to Shogun Ships. As Shogun Ships has a distinct juridical personality from Oceanview, as discussed above, the Court is not inclined to conclude that said documents came from, or were issued by Shogun Ships. Save for herein petitioner Reboso, the ID and COE, at best, only demonstrate the employment relationship of petitioner Parayday with Oceanview, which, significantly, ceased in February 2001.

The CA did not also consider the Time Keeper's Reports as one of such proofs that petitioners were employees of Shogun Ships since the genuineness and due execution of the said reports were unverifiable.

We agree. While the reports may show petitioners' inclusion in the employer's payroll which may serve as a badge of regular employment, we are inclined to agree with the respondent that these reports were uncorroborated and

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[46] *Lopez v. Bodega City*, 558 Phil. 666, 674 (2007).
[47] *Reyes v. Glaucoma Research Foundation, Inc.*, *supra* note 31 at 789.
[48] *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 230 (2014).
[49] *Javier v. Fly Ace Corporation*, 682 Phil. 359, 369 (2012). *See* also *Reyes v. Glaucoma Research Foundation, Inc.*, *supra* note 31 at 790.
[50] *Functional, Inc. v. Granfil*, 676 Phil. 279, 287 (2011).
[51] *Valencia v. Classique Vinyl Products Corporation*, 804 Phil. 492, 504 (2017).
[52] CA *rollo*, p. 173.
[53] *Id.* at 90.
[54] *Id.* at 96-99.

could have been easily concocted or fabricated to suit the personal interest and purpose of petitioners. Notably, neither of the petitioners attested to the genuineness of the document, nor that the same were executed or signed in their presence. Petitioners did not even disclose the maker of the records, or that the signature appearing thereon is genuine.[55]

In *Uichico v. National Labor Relations Commission*,[56] this Court held that:

> It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. x x x (Citations omitted)

Even if the records were admissible, they would not suffice to show petitioners' employment status with Shogun Ships. The reports presented by petitioners made no reference to Shogun Ships or Oceanview, or to any employer for that matter. These documents do not even indicate the years during which they were issued to petitioners. As correctly held by the CA, these reports cannot be considered as sufficient evidence to show that petitioners were engaged by Shogun Ships since 1996/1997.

Considering the foregoing premises, this Court is constrained to reexamine the facts of the instant case based on the allegations and sworn statements presented by the parties.

In its Decision, the CA found that petitioners failed to establish their employment relationship with Shogun Ships.

This Court disagrees.

The application of the four-fold test in this case shows that an employer-employee relationship did exist between petitioners and Shogun Ships.

While this Court cannot give credence to petitioners' allegations that they were engaged by Shogun Ships through Oceanview as early as 1996/1997 for reasons already stated above, it is worth noting that respondent have not categorically denied that sometime in May 2006, petitioners were engaged, or at the least, were permitted by herein respondent to work on repairs on one of the barges of Shogun Ships, M/T Daniela Natividad. Respondent did not also deny that petitioners worked for Shogun Ships until they were supposedly verbally dismissed from employment on May 1, 2008. Notably, respondent even admitted that petitioners were called in to do repairs on the barges of Shogun Ships.

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[55] RULES OF COURT, Rule 132, Sec. 20.
[56] 339 Phil. 242, 250-251 (1997).

Significantly, respondent have not denied that petitioners were duly compensated for any work done by them on the barges. Respondent even categorically admitted that Shogun Ships provided petitioners financial assistance when they were hospitalized from May 11, 2006 until June 6, 2006. Respondent also have not disproved the allegation of petitioners that Shogun Ships continued to pay petitioners' salaries after they were discharged from hospitalization on June 7, 2006.

Respondent also have not categorically denied that petitioners were verbally dismissed on May 1, 2008, as in fact, respondent's allegations, *i.e.*, that petitioners' *"work to repair was only done when there is work available for them. Once the repair was done, petitioners were paid for work done, and it ends there"*[57] corroborated petitioners' claims that cessation of their services was determined by Shogun Ships.

All told, the fact that the aforesaid allegations of petitioners were not controverted by herein respondent lends credence to petitioners' assertions that Shogun Ships: (1) engaged them as its employees; (2) paid their salaries for services rendered; and (3) had ultimate discretion to dismiss their services after the needed repairs on the barges were carried out. It is worth noting that Rule 8, Section 11, of the Rules of Court, which supplements the NLRC Rules of Procedure,[58] provides that allegations which are not specifically denied are deemed admitted.[59]

As regards Shogun Ship's power of control over petitioners, respondent contended that Shogun Ships did not direct the manner and method in which petitioners do their work. It bears emphasis, however, that the control test calls merely for the existence of the right to control the manner of doing the work and not the actual exercise of the right.[60] Thus, in *Dy Keh Beng v. International Labor and Marine Union of the Philippines*,[61] this Court held that an employer's power of control, particularly over personnel working under the employer, is deemed inferred, more so when said personnel are working at the employer's establishment:

> Petitioner contends that the private respondents "did not meet the control test in the light of the x x x definition of the terms employer and employee, because there was no evidence to show that petitioner had the right to direct the manner and method of respondent's work." Moreover, it is argued that petitioner's evidence showed that "Solano worked on a *pakiaw* basis" and that he stayed in the establishment only when there was work.
>
> While this Court upholds the control test under which an employer-employee relationship exists "where the person for whom the services are performed reserves a right to control not only the end to be achieved but also

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[57] *Rollo*, p. 427.
[58] 2011 NLRC RULES OF PROCEDURE, AS AMENDED, Rule 1, Sec. 3.
[59] *Traders Royal Bank v. National Labor Relations Commission*, 378 Phil. 1081, 1087 (1999).
[60] *Dy Keh Beng v. International Labor and Marine Union of the Philippines*, 179 Phil. 131, 137 (1979).
[61] *Id.* at 136-137.

> the means to be used in reaching such end," it finds no merit with petitioner's arguments as stated above. It should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right. Considering the finding by the Hearing Examiner that the establishment of Dy Keh Beng is "engaged in the manufacture of baskets known as *kaing*," it is natural to expect that those working under Dy would have to observe, among others, Dy's requirements of size and quality of the *kaing*. Some control would necessarily be exercised by Dy as the making of the *kaing* would be subject to Dy's specifications. Parenthetically, since the work on the baskets is done at Dy's establishments, it can be inferred that the proprietor Dy could easily exercise control on the men he employed.

Clearly, considering that petitioners were working on the barges alongside regular employees of Shogun Ships and that they were taking orders from its engineers as to the required specifications on how the barges of Shogun Ships should be repaired, which respondent herein failed to deny, it may be thus logically inferred that Shogun Ships, to some degree, exercised control or had the right to control the work of petitioners.

We now go to the next issue: Did petitioners attain regular employment status?

Respondent maintains that petitioners cannot be placed in the same category as regular employees of Shogun Ships considering that they were merely called in occasionally by its regular employees, or on a "as per need" basis, and that their engagement as welders was dependent on the availability of the work needed on the repairs of the barges. In support of these allegations, respondent presented the sworn statements of Mr. Panao and Mr. Soriano, Jr., regular employees of Shogun Ships. Moreover, respondent insisted that petitioners' functions as fitters/welders cannot be regarded as those which are necessary and desirable to the business of cargo shipping.

While both the Labor Arbiter and the NLRC, on one hand, held that petitioners were regular employees of Shogun Ships, the CA ruled, on the other hand, that petitioners could not have attained regular employment status as they failed to prove that they were continuously employed by Shogun Ships.

Article 295 of the Labor Code "provides for two (2) types of regular employees, namely: (*a*) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (*b*) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category)."[62]

The regular employment status of a person is defined and prescribed by law and not by what the parties say it should be.[63] Thus, while respondent was

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[62] *University of Santo Tomas v. Samahang Manggagawa Ng UST,* 809 Phil. 212, 221 (2017).
[63] *Fuji Television Network, Inc. v. Espiritu,* 749 Phil. 388, 439 (2014), citing *Price v. Innodata Phils., Inc./Innodata Corp.*, 588 Phil. 568, 580 (2008).

of the belief that rendering occasional work for Shogun Ships prevented the parties from creating an employment relationship, much more for petitioners from attaining regular employment status, provision of law, however, dictates that they were regular employees of Shogun Ships.

First, the records of the case are bereft of evidence that petitioners were duly informed of the nature and status of their engagement with Shogun Ships. Notably, in the absence of a clear agreement or contract, whether written or otherwise, which would clearly show that petitioners were properly informed of their employment status with Shogun Ships, petitioners enjoy the presumption of regular employment in their favor.[64]

Second, petitioners were performing activities which are usually necessary or desirable in the business or trade of Shogun Ships. This connection can be determined by considering the nature of the work performed by petitioners and its relation to the scheme of the particular business or trade of Shogun Ships in its entirety.[65] As Shogun Ships is engaged in the business of domestic cargo shipping, it is essential, if at all necessary, that Shogun Ships must continuously conduct vital repairs for the proper maintenance of its barges. The desirability of petitioners functions is bolstered by the fact that Shogun Ships itself precisely retained in its employ regular employees whose duties and responsibilities included, among others, performing necessary repair and maintenance work on the barges.

Third, irrespective of whether petitioners' duties or functions are usually necessary and desirable in the usual trade or business of Shogun Ships, the fact alone that petitioners were allowed to work for it for a period of more than one (1) year, *albeit* intermittently since May 2006 until they were dismissed from employment on May 1, 2008, was indicative of the regularity and necessity of welding activities to its business. As such, their employment is deemed to be regular with respect to such activities and while such activities exist.

In sum, we hold that petitioners have proven by substantial evidence – which only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise"[66] that they were regular employees of Shogun Ships. In any event, it is well-settled in this jurisdiction that in any controversy between a laborer and his master, doubts reasonably arising from the evidence are resolved in favor of the laborer.[67]

Petitioners were illegally dismissed from employment.

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[64] *See Omni Hauling Services, Inc. v. Bon,* 742 Phil. 335, 346 (2014).
[65] *University of Santo Tomas v. Samahang Manggagawa Ng UST, supra* note 62 at 62-63, citing *Universal Robina Corporation v. Catapang,* 509 Phil. 765, 779 (2005).
[66] *Distribution & Control Products, Inc. v. Santos,* G.R. No. 212616, July 10, 2017, 830 SCRA 452, 460, citing *Agusan del Norte Electric Cooperative, Inc. v. Cagampang,* 589 Phil. 306, 313 (2008).
[67] *Masing and Sons Development Corporation v. Rogelio,* 670 Phil. 120, 133 (2011).

Having gained regular status, petitioners could only be dismissed for just or authorized cause after they had been accorded due process. Thus, the query: Were they dismissed in accordance with law?

It is an established principle that the dismissal of an employee is justified where there was a just cause and the employee was afforded due process prior to dismissal. The burden of proof to establish these twin requirements is on the employer, who must present clear, accurate, consistent, and convincing evidence to that effect.[68]

Here, respondent was unable to discharge the burden of proof required to establish petitioners' dismissal from employment was legal and valid. The records also failed to show that respondent afforded petitioners due process prior to their dismissal, as in fact, they were merely verbally dismissed, and were thus not served notices informing them of the grounds for which their dismissal was sought. Clearly, petitioners' dismissal was not carried out in accordance with law and was, therefore, illegal.

In view therefore of petitioners' illegal dismissal, reinstatement and payment of backwages must necessarily be made. Petitioners' backwages must be computed from the time they were unjustly dismissed from employment on May 1, 2008 up to actual reinstatement.

Petitioners' claims of underpayment of wages and benefits, damages and attorney's fees, and solidary liability of individual respondents Cordero and Raymundo.

This Court is aware that the Labor Arbiter, in his April 27, 2009 Decision, which was affirmed by the NLRC, denied petitioners' claims for underpayment of wages and benefits. Petitioners' claims for damages and attorney's fees were similarly denied for lack of merit. A perusal of the Labor Arbiter's Decision would also show that liability as to payment of petitioners' full backwages and award for reinstatement rested solely on Shogun Ships, to the exclusion of herein individual respondents Cordero and Raymundo. The pertinent portion of the April 27, 2009 Decision of the Labor Arbiter reads, as follows:

> Accordingly, respondent company has to reiterate [sic] complainants to their former position without loss of their seniority rights with full backwages from time of dismissal until fully reinstated.
>
> On the money claims, we deny the claims of underpayment of wages and benefits for lack of factual basis thereof. Likewise[,] the claim for damages and attorney's fees are likewise denied for lack of factual basis.[69]

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[68] *Allied Banking Corporation now merged with Philippine National Bank v. Calumpang*, G.R. No. 219435, January 17, 2018.

[69] CA *rollo*, p. 57.

Notably, notwithstanding the above findings, the records would bear that petitioners did not appeal from the April 27, 2009 Decision of the Labor Arbiter. It was only before this Court that herein petitioners resurrected their claims for underpayment of wages and benefits, including damages and attorney's fees.[70]

Article 223 of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's decision, provides:

> ART. 229 (223) *Appeal*. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

Meanwhile, Section 21, Rule V of the 2011 NLRC Rules of Procedure, as amended, provides:

> SECTION 21. *FINALITY OF THE DECISION OR ORDER AND ISSUANCE OF CERTIFICATE OF FINALITY.* – (a) Finality of the Decision or Order of the Labor Arbiter. – If no appeal is filed with the Regional Arbitration Branch of origin within the time provided under Article 223 (now 229) of the Labor Code, as amended, and Section 1, Rule VI of these Rules, the decision or order of the Labor Arbiter shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative. *(As amended by En Banc Resolution No. 11-12, Series of 2012)*

In *Industrial Management International Development Corporation (INIMACO) v. National Labor Relations Commission,*[71] this Court held that:

> It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. x x x (Citations omitted)

Thus, parties who do not appeal from a judgment can no longer seek modification or reversal of the same. Considering that petitioners failed to question the findings of the Labor Arbiter, as even affirmed by the NLRC, that they are not entitled to their monetary claims consisting of underpayment of salaries and benefits, and claims for damages and attorney's fees, including Shogun Ship's exclusive liability for payment of petitioners' backwages, said findings have therefore long become final and can no longer be impugned in this action.[72]

Since the April 27, 2009 Decision of the Labor Arbiter, insofar as the unappealed portion of the said Decision is concerned, is already final and

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[70] *Rollo,* pp. 25-32 and 58.
[71] 387 Phil. 659, 667 (2000).
[72] *Silliman University v. Fontelo-Paalan,* 552 Phil. 808, 817 (2007).

executory against the petitioners, respondents have already acquired vested rights by virtue of said judgment. "[J]ust as the losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision."[73]

Other matters

Petitioners impute fault on the CA for serving to Atty. Napoleon Banzuela, petitioners' former counsel, its May 11, 2012 Decision, and not to petitioners' counsel on record, The Law Firm of Velandrez and Associates, despite receipt of the Notice of Change in the Composition of the Law Office on January 26, 2012.[74] On this point, this Court finds that the CA committed no error when it served to Atty. Banzuela its May 11, 2012 Decision since it was only on July 17, 2012 that the Court of Appeals received Atty. Banzuela's Motion to Withdraw as Counsel[75] of petitioners.

In the matter of petitioners' motion to cite respondent for direct contempt of court for supposedly misrepresenting facts and using insulting language against petitioners, we find the same unmeritorious. While it is well-established that contemptuous statements made in pleadings filed with the court constitute direct contempt,[76] a perusal of respondent's Comment (to petitioners' Petition) would show that no such contemptuous language was utilized. Moreover, this Court finds that respondent has not employed deceitful acts which would serve as basis for the charge of direct contempt.

WHEREFORE, the instant Petition is **GRANTED**. The May 11, 2012 Decision and November 19, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 112075 are **REVERSED** and **SET ASIDE**. The August 28, 2009 Decision and October 27, 2009 Resolution of the NLRC, which declared petitioners Pedrito R. Parayday and Jaime Reboso to have been illegally dismissed from employment, are **REINSTATED and AFFIRMED.**

The case is **REMANDED** to the Labor Arbiter for the purpose of re-computation of petitioners' full backwages.

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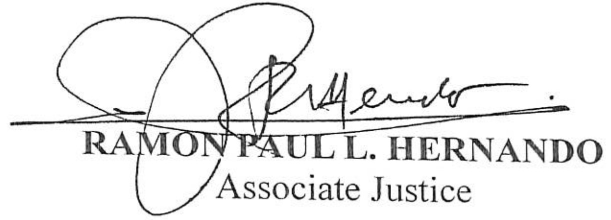
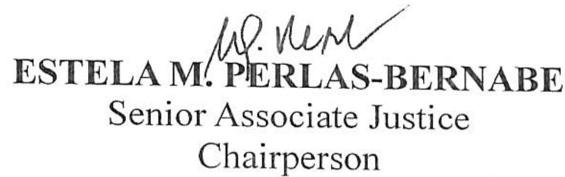
[73] *Id.* at 818.
[74] CA *rollo,* pp. 339-343.
[75] *Id.* at 370.
[76] *Ante v. Pascua*, 245 Phil. 745, 747 (1988).

SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

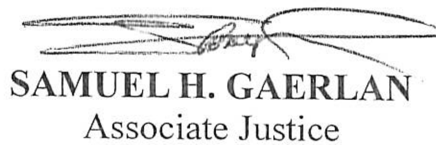
WE CONCUR:



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

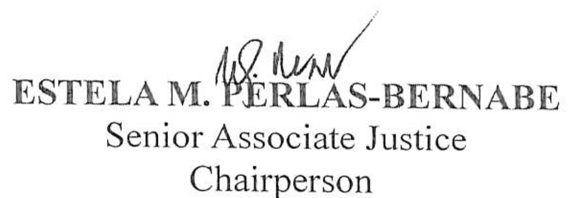
EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
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.



ESTELA M. PERLAS-BERNABE
Senior 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