



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 5, 2022 which reads as follows:*

**“G.R. No. 250680 (Ruel A. Serrano, *Petitioner vs. People of the Philippines, Respondent*). – Before the Court is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated February 28, 2019 and the Resolution<sup>3</sup> dated September 10, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 01606. The CA affirmed the Decision<sup>4</sup> dated November 17, 2017 of Branch 23, Regional Trial Court (RTC), Kidapawan City that found Ruel A. Serrano (petitioner) guilty of violation of Section 9(a),<sup>5</sup> in**

- over – eleven (11) pages ...

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<sup>1</sup> See Appeal by Certiorari; *rollo*, pp. 3-16.

<sup>2</sup> *Id.* at 76-86. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Walter S. Ong and Florencio Mallano Mamauag, Jr.

<sup>3</sup> *Id.* at 88-91. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Florencio M. Mamauag, Jr. and Angelene Mary W. Quimpo-Sale.

<sup>4</sup> *Id.* at 92-99. Penned by Presiding Judge Jose T. Tabosares.

<sup>5</sup> SECTION 9. *Coverage.* – (a) Coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers: *Provided, That* in the case of domestic helpers, their monthly income shall not be less than One thousand pesos (P1,000.00) a month: *Provided, further, That* any benefit already earned by the employees under private benefit plans existing at the time of the approval of this Act shall not be discontinued, reduced or otherwise impaired: *Provided, further, That* private plans which are existing and in force at the time of compulsory coverage shall be integrated with the plan of the SSS in such a way where the employer’s contribution to his private plan is more than that required of him in this Act, he shall pay to the SSS only the contribution required of him and he shall continue his contribution to such private plan less his contribution to the SSS so that the employer’s total contribution to his benefit plan and to the SSS shall be the same as his contribution to his private benefit plan before the compulsory coverage: *Provided, further, That* any changes, adjustments, modifications, eliminations or improvements in the benefits to be available under the remaining private plan, which may be necessary to adopt by reason of the reduced contributions thereto as a result of the integration, shall be subject to agreements between the employers and employees concerned: *Provided, further, the* private benefit plan which the employer shall continue for his employees shall remain under the employer’s management and control unless there is an existing agreement to the contrary: *Provided, finally, That* nothing in this Act shall be construed as a limitation on the right of employers and employees to agree on and adopt benefits which are over and above those provided under this Act.

x x x x

relation to Sections 24(a)<sup>6</sup> and 28(e)<sup>7</sup> of Republic Act No. (RA) 1161,<sup>8</sup> as amended by RA 8282<sup>9</sup> or the Social Security Act of 1997 (SSS Law).<sup>10</sup> The assailed Resolution denied petitioner's Motion for Reconsideration.<sup>11</sup>

*The Antecedents*

The case stemmed from an Amended Information filed before the RTC against petitioner, the accusatory portion of which reads:

That on or about the period comprising from 1986 to 2010 in the City of Kidapawan, Philippines, where SSS Kidapawan City Branch Office is located, and within the jurisdiction of this Honorable Court, the above mentioned accused, being then the owner of RUTER'S BOARDING HOUSE with address at Quezon Boulevard, Kidapawan City which is within the territorial jurisdiction of the SSS Kidapawan Branch office, Kidapawan City,

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<sup>6</sup> SECTION 24. *Employment Records and Reports.* – (a) Each employer shall immediately report to the SSS the names, ages, civil status, occupations, salaries and dependents of all his employees who are subject to compulsory coverage: *Provided*, That if an employee subject to compulsory coverage should die or become sick or disabled or reach the age of sixty (60) without the SSS having previously received any report or written communication about him from his employer, the said employer shall pay to the SSS damages equivalent to the benefits to which said employee member would have been entitled had his name been reported on time by the employer to the SSS, except that in case of pension benefits, the employer shall be liable to pay the SSS damages equivalent to the accumulated pension due as of the date of settlement of the claim or the five (5) years' pension, whichever is higher, including dependents' pension: *Provided, further*, That if the contingency occurs within thirty (30) days from the date of employment, the employer shall be relieved of his liability for damages: *Provided, further*, That any person or entity engaging the services of an independent contractor shall be subsidiarily liable with such contractor for any civil liability incurred by the latter under this act: *Provided, finally*, That the same person or entity engaging the services of an independent contractor shall require such contractor to post a surety bond to guarantee the payment of the worker's benefits.

x x x x

<sup>7</sup> SECTION 28. *Penal Clause.* – x x x.

(e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years, or both, at the discretion of the court: *Provided*, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

x x x x

<sup>8</sup> An Act to Create a Social Security System Providing Sickness, Unemployment, Retirement, Disability and Death Benefits for Employees," [Social Security Act of 1954], Republic Act No. 1161 (1954).

<sup>9</sup> An Act Further Strengthening the Social Security System Thereby Amending For this Purpose Republic Act No. 1161, as amended, Otherwise Known as the Social Security Law, [Social Security Act of 1997], Republic Act No. 8282 (1997).

<sup>10</sup> *Rollo*, p. 85.

<sup>11</sup> *Id.* at 91.

willfully, unlawfully and without any justifiable cause, failed to register with SSS as an employer and to report his employee Ernesto P. Sarino for SSS, compulsory coverage despite demands, to the damage and prejudice of the Social Security System and to Ernesto P. Sarino.

CONTRARY TO LAW.<sup>12</sup>

Upon arraignment, petitioner pleaded not guilty to the charge.<sup>13</sup>

Trial ensued.

In 1986, petitioner hired complainant Ernesto P. Sarino (Sarino) as a carpenter for the former's boarding house business. He paid Sarino on a weekly basis at the rate of ₱150.00 per day from 1986 to 1989; ₱200.00 per day from 1990 to 1999; and ₱250.00 per day from 2000 to 2010.<sup>14</sup> Sometime in 2010, Sarino's co-worker approached petitioner and asked for a higher pay. Petitioner responded by saying that there would be no available work for them anymore. Hence, Sarino and his co-worker packed their tools and left the workplace.<sup>15</sup> Sarino then discovered that he was not enrolled in the Social Security System (SSS). He went to the SSS Kidapawan City Branch to complain about petitioner's failure to report him as a member and petitioner's nonpayment of the premiums. After some discussions, Sarino and petitioner agreed that the latter would pay 10 years worth of SSS contributions instead of 24 years.<sup>16</sup>

In April 2011, SSS Accounts Officer Rona Calo (Calo) met Sarino and petitioner in her office. She advised petitioner to register as an employer. Instead of submitting the required form, petitioner delivered his affidavit alleging that Sarino was not his employee and that the latter was only paid on a daily or "*pakyaw*" basis.<sup>17</sup> Later, Calo sent a letter to petitioner about the initial assessment of his premium delinquency, but the latter refused to receive the letter. On June 1, 2011, Calo sent a demand letter to petitioner, but the latter failed to respond. The case was then endorsed to the SSS Southern Mindanao Unit. On June 28, 2011, a final demand letter was personally served on petitioner.<sup>18</sup>

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<sup>12</sup> As culled from the CA Decision; *id.* at 77-78.

<sup>13</sup> *Id.* at 78.

<sup>14</sup> *Id.* at 94.

<sup>15</sup> *Id.* at 95.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 78.

<sup>18</sup> *Id.* at 79.

Petitioner denied that Sarino was his employee. According to him, it was his wife, Teresita Serrano, who was the registered owner of Ruter's Boarding House. Further, Sarino's work was not continuous because the improvements in the boarding house depended on the availability of funds.<sup>19</sup>

*The RTC Ruling*

In the Decision<sup>20</sup> dated November 17, 2017, the RTC found petitioner guilty as charged.<sup>21</sup> It found that Sarino was an employee of petitioner in his boarding house business, and as such, Sarino's membership with the SSS is mandatory.<sup>22</sup> Petitioner violated the SSS Law by failing to deduct the SSS contributions of Sarino from the latter's salary and refusing to remit the same, including the employer's share, to the SSS.<sup>23</sup> The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the court finds that the evidences (*sic*) of the prosecution are sufficient to prove the guilt of the accused beyond reasonable doubt.

Consequently, the court finds the accused guilty of the crime as charged, and he is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) day as minimum to ten (10) years and one (1) day as maximum and to pay a fine of Twenty thousand pesos (P20,000.00) and further to pay his unpaid contributions due to complainant Ernesto P. Sarino through the SSS Kidapawan Branch, the sum of Php 321,240.77 as of June 1, 2011, and to pay interests and penalties due thereon pursuant to the SSS schedule of penalties and interest as it may due since June 1, 2011 until the amount is fully paid. No costs.

SO ORDERED.<sup>24</sup>

Aggrieved, petitioner appealed to the CA.

*The Ruling of the CA*

In the assailed Decision,<sup>25</sup> the CA affirmed petitioner's conviction. It decreed as follows:

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<sup>19</sup> Id.

<sup>20</sup> Id. at 92-99.

<sup>21</sup> Id. at 99.

<sup>22</sup> Id. at 98-99.

<sup>23</sup> Id. at 99.

<sup>24</sup> Id.

<sup>25</sup> Id. at 76-86.

WHEREFORE, the appeal is DENIED. The Decision dated November 17, 2017 of the Regional Trial Court (RTC), Twelfth (12<sup>th</sup>) Judicial Region, Branch 23, Kidapawan City in Criminal Case No. 760-2011 for violation of Section 9 (a) in relation to Section 24 (a) punishable under section 28 of the Social Security System (SSS) Law, as amended is hereby AFFIRMED.

The Division Clerk of Court is DIRECTED to ISSUE a Warrant of Arrest against accused-appellant Ruel Serrano and to ORDER the Chief of Police of Kidapawan City and/or the Chief of Police of Davao City to SERVE THE WARRANT, EFFECT THE ARREST of accused-appellant Ruel Serrano and to MAKE A REPORT thereon pursuant to Section 4 of Rule 113 of the Revised Rules of Court.

SO ORDERED.<sup>26</sup>

The CA found that regardless of the nature of Sarino's employment, he is still subject to the compulsory coverage of the SSS Law as his employment does not fall under the exceptions provided therein.<sup>27</sup> It held that considering that Sarino should be a compulsory member of SSS while being employed by petitioner, the latter should have made prompt remittances to the SSS.<sup>28</sup> It noted that any divergence from the law subjects petitioner not only to monetary sanctions but also to a criminal prosecution because he failed to do the following: (1) register Sarino with the SSS; (2) deduct the latter's monthly contributions from his wage or salary; and (3) remit his SSS contributions after deducting them from his salary or wage.<sup>29</sup>

Petitioner moved for reconsideration of the Decision, but the CA denied it in the assailed Resolution.<sup>30</sup> Thus:

WHEREFORE, premises considered, the Motion for Reconsideration and Supplemental to the Motion for Reconsideration, Payment of SSS Contributions and Motion to Withdraw and/or Dismiss the Case of accused-appellant Ruel Serrano are hereby DENIED for lack of merit. The Division Clerk of Court is directed to issue an Alias Warrant of Arrest against Serrano. Let a copy of this Resolution be furnished to the National Bureau of Investigation, Main Office, NBI Building, Taft Avenue, Ermita, Manila, Philippines.

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<sup>26</sup> Id. at 85.

<sup>27</sup> Id. at 83.

<sup>28</sup> Id.

<sup>29</sup> Id. at 84.

<sup>30</sup> Id. at 88-91.

SO ORDERED.<sup>31</sup>

Insisting on his innocence, petitioner filed the present petition<sup>32</sup> under Rule 45 of the Rules of Court against the CA Decision.

*The Issues*

1. Whether the CA erred when it failed to consider that petitioner already applied for condonation under RA 11199;<sup>33</sup> and
2. Whether the CA erred when it ruled that Sarino was petitioner's employee.

In its Comment,<sup>34</sup> the People of the Philippines, through the Office of the Solicitor General (OSG), maintains that: petitioner is Sarino's employer; it was petitioner who hired Sarino and informed him of the work he was to perform every week; it was also petitioner who determined and paid Sarino's daily wage; and it was petitioner who terminated the services of Sarino.<sup>35</sup>

The OSG likewise asserts that petitioner is not entitled to condonation under RA 11199, or the Social Security Act of 2018<sup>36</sup> and that condonation of penalty under SSS Circular No. 2019-004<sup>37</sup> is anchored on the full payment of an employer's delinquent contributions. However, a perusal of the SSS Contributions Payment Forms<sup>38</sup> and the UCPB Manager's Check No. 0000003620<sup>39</sup> show that they do not satisfy the full amount of the delinquency contributions as

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<sup>31</sup> Id. at 91.

<sup>32</sup> Id. at 3-16.

<sup>33</sup> An Act Rationalizing and Expanding the Powers and Duties of the Social Security Commission to Ensure the Long-Term Viability of the Social Security System, Repealing for the Purpose Republic Act No. 1161, as amended by Republic Act No. 8282, Otherwise known as the Social Security Act of 1997 [Social Security Act of 2018], Republic Act No. 11199 (2019).

<sup>34</sup> *Rollo*, pp. 54-74.

<sup>35</sup> See Comment; id. at 63-69.

<sup>36</sup> SECTION 4. *Powers and Duties of the Commission and SSS.* –

x x x x

*Provided*, That the Social Security Commission shall, immediately after the passage of this Act, institute a condonation of penalties of delinquent employers under Republic Act No. 10361, subject to such rules and regulations as the Social Security Commission may provide.

x x x x

<sup>37</sup> Social Security System, Condonation and Non-Imposition of Penalties on Delinquent Social Security Contributions, SSS Circular No. 2019-004 (March 15, 2019).

<sup>38</sup> See *rollo*, pp. 22-46.

<sup>39</sup> See id. at 21.

computed by the RTC. Hence, the OSG contends that petitioner cannot claim to have already paid the full amount of the delinquent contributions.<sup>40</sup>

In his Reply,<sup>41</sup> petitioner insists that his wife had already fully paid the entire amount of ₱80,352.00, thus, dispelling the need for an installment proposal to the SSS.<sup>42</sup>

*The Court's Ruling*

The petition lacks merit.

The SSS is a government agency that is imbued with the salutary purpose of carrying out the State's policy of establishing, developing, promoting, and perfecting a sound and viable tax-exempt social security system.<sup>43</sup> It shall provide meaningful protection to members and beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden.<sup>44</sup> Corollary, the soundness and viability of its funds greatly depend on the contributions of its members, both the employees and employers.<sup>45</sup> Needless to say, the entitlement and amount of benefit and privileges of its members are adversely affected by the non-remittance of the much-needed contributions.<sup>46</sup> Any divergence from the rule subjects the employer not only to monetary sanctions but also to criminal prosecution.<sup>47</sup>

Here, petitioner is charged with violation of Section 9(a), in relation to Sections 24(a) and 28 of the SSS Law, as amended. A judicious review of the records shows that the prosecution has established by proof beyond reasonable doubt that from 1986 to 2010, petitioner failed to register Sarino with the SSS and remit his contributions. To avoid liability, petitioner simply focused on establishing that Sarino was not his employee and that the latter was engaged on "pakyaw" or task basis negating any employer-employee relationship.<sup>48</sup>

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<sup>40</sup> Id. at 71.

<sup>41</sup> Id. at 103-108.

<sup>42</sup> Id. 107.

<sup>43</sup> *Ambassador Hotel, Inc. v. Social Security System*, 811 Phil. 424, 434 (2017).

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> *Navarra v. People*, 807 Phil. 765, 773 (2017).

<sup>48</sup> *Rollo*, pp. 10-14.

Petitioner's assertion must be rejected.

Settled is the rule that the factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by the Court. Such findings are deemed final and conclusive when, as in this case, they are supported by the evidence on record.<sup>49</sup>

Even a factual review of the case shows that Sarino was petitioner's employee.

To determine the existence of an employer-employee relationship, the so-called four-fold test is generally considered. The elements of the test are: (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.<sup>50</sup> Petitioner's relationship with Sarino satisfies this test.

*First*, petitioner engaged the services of Sarino as a carpenter in 1986,<sup>51</sup> thus satisfying the element of selection and engagement of the employee. He initially hired Sarino to make cabinets, install doors, make wooden beds, paint, and finish the concrete walls, among others.<sup>52</sup> Yet, even after the construction of the boarding house, petitioner continued to engage the services of Sarino to maintain the place, fix the furniture and plumbings therein, and install electric wiring.<sup>53</sup>

*Second*, petitioner paid Sarino's wages. It is uncontested that petitioner had been paying Sarino weekly for work performed from Monday to Saturday. From 1986 to 1989, Sarino was paid ₱150.00 daily. This was increased to ₱200.00 per day from 1990 to 1999 and then ₱250.00 per day from 2000 to 2010.<sup>54</sup> This satisfies the element of payment of wages.

*Third*, in 2010, petitioner dismissed Sarino and another employee after the latter asked for a pay increase, demonstrating the power of dismissal.<sup>55</sup>

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<sup>49</sup> *Navarra v. People*, supra note 47, at 774, citing *Guevarra v. People*, 726 Phil. 186, 193 (2014).

<sup>50</sup> *David v. Macasio*, 738 Phil. 293, 307 (2014).

<sup>51</sup> *Rollo*, p. 94.

<sup>52</sup> *Id.* at 78.

<sup>53</sup> *Id.* at 94.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 95.



*Fourth*, petitioner had the power to control and supervise Sarino's work as to the means and methods of performing it. In addition to setting the day and time when Sarino should report for work, petitioner also dictated the task that needed to be done for the entire week depending on the needs of the boarding house.<sup>56</sup> Petitioner's wife may be the registered owner of the boarding house, but this does not necessarily mean that she was the employer of Sarino. To stress, petitioner hired Sarino way back in 1986. He was the one who paid him weekly and informed him of the works he should undertake. It was also petitioner who terminated his services in 2010.<sup>57</sup>

Indeed, the totality of the surrounding circumstances of the present case sufficiently points to an employer-employee relationship between petitioner and Sarino. Sarino's engagement on "*pakyaw*" or task basis does not determine the parties' relationship as it is simply a method of computation of payment. Sarino is petitioner's employee, albeit paid on "*pakyaw*" or task basis.<sup>58</sup>

At this point, the Court is of the view that there is evidence that petitioner failed to do the following: (1) register himself and Sarino with the SSS; (2) deduct monthly contributions from the salary or wage of Sarino; and (3) remit to the SSS Sarino's contributions after deducting them from his salary or wage.

Notably, petitioner did not squarely address the issue regarding his obligations because there is a dearth of evidence that he registered their business with the SSS or remitted the required contributions. Instead, he averred that the present case should be withdrawn in accordance with SSS Circular No. 2019-004 regarding the condonation and non-imposition of penalties on delinquent social security contributions.

As properly observed by the CA, however, the penalties subject to condonation under SSS Circular No. 2019-004 refers to surcharges imposed for the failure to pay the contributions on time under Section

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<sup>56</sup> Id. at 94.

<sup>57</sup> Id. at 94-95.

<sup>58</sup> Id.

22(a)<sup>59</sup> of RA 8282. Significantly, petitioner was penalized pursuant to Section 28(e) of the SSS Law, which is not covered by SSS Circular No. 2019-004. Section 13 of SSS Circular No. 2019-004 provides:

SECTION 13. WHEN ARE PENALTIES CONDONED. — The penalty provided under Section 22 (a) of R.A. No. 1161, as amended by R.A. No. 8282, shall be condoned by virtue of R.A. No. 11199 or the Social Security Act of 2018 when and until all the delinquent contributions are remitted by the employer to the SSS.

The penalty for the crime committed by petitioner is provided for in Section 28(e) of RA 1161, as amended by RA 8282. The provision provides that “where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions from the employees’ compensation and remit the same to the SSS, the penalty shall be a fine of not less Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.” Based on the provision, the imposable penalty is an indeterminate sentence whose minimum should not be less than the minimum of six (6) years and one (1) day, and whose maximum should not exceed the maximum of twelve (12) years. Here, the Court deems it proper to reduce the penalty imposed by the lower courts. Thus, petitioner should be sentenced to suffer an indeterminate penalty of imprisonment from six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, and is ordered to pay a fine of P20,000.00. He is also ordered to pay the SSS the unpaid obligation in the amount of P321,240.77 plus interest at the rate of six percent (6%) *per annum* reckoned from June 1, 2011, until fully paid.

**WHEREFORE**, the petition is **DENIED**. The Decision dated February 28, 2019 and the Resolution dated September 10, 2019 of the Court of Appeals in CA-G.R. CR No. 01606 are **AFFIRMED**.

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<sup>59</sup> SECTION 22. *Remittance of Contributions*. – (a) The contributions imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided*, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer. (Emphasis supplied)

Petitioner Ruel A. Serrano is found **GUILTY** beyond reasonable doubt of violation of Section 9(a), in relation to Sections 24(a) and 28(e), of Republic Act No. 1161, as amended by Republic Act No. 8282. He is sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, and to pay a fine of ₱20,000.00. He is further **ORDERED** to pay the Social Security System the unpaid obligation of ₱321,240.77 plus interest at the rate of six percent (6%) *per annum* reckoned from June 1, 2011, until fully paid.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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**DEC 01 2022**

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The Hon. Presiding Judge  
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