



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 7, 2022, which reads as follows:

“G.R. No. 204166 (Roberto V. Ongpin, Deltaventure Resources, Inc., and Goldenmedia Corporation v. Atty. Zenaida Ongkiko-Acorda, as alleged (former) attorney-in-fact of Atty. Mario E. Ongkiko, and allegedly in behalf of Philex Mining Corporation). — Before the Court is a Petition for Review on *Certiorari*¹ with application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction assailing the Decision² dated October 24, 2012 of the Court of Appeals (CA) in C.A.- G.R. SP No. 124683, which dismissed the Petition for *Certiorari* and Prohibition³ filed by Roberto V. Ongpin (Mr. Ongpin), and the corporations he is a beneficial owner and alter ego of, namely Deltaventure Resources, Inc. (Deltaventure) and Goldenmedia Corporation (Goldenmedia). Mr. Ongpin, Deltaventure, and Goldenmedia shall hereinafter be referred to as “petitioners” collectively.

This case stems from a derivative suit filed by respondent Atty. Zenaida Ongkiko-Acorda (Atty. Ongkiko-Acorda), who is the daughter and Attorney-in-Fact of respondent Atty. Mario E. Ongkiko (Atty. Ongkiko), a minority stockholder of at least Seven Hundred Seventy (770) Class “A” shares of respondent corporation Philex Mining Corporation (PMC) at the time the transaction subject of the suit occurred.⁴ Atty. Ongkiko-Acorda, Atty. Ongkiko, and PMC shall hereinafter be referred to as “respondents” collectively.

¹ *Rollo* (Vol. I), pp. 3-94.

² *Id.* at 97-109. Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan (now a Member of the Court).

³ *Id.* at 313-368.

⁴ *Id.* at 110-111.

A handwritten signature in black ink, located in the bottom right corner of the page.

Respondents alleged that Mr. Ongpin, as Director and Vice-Chairman of PMC, violated Section 23.2 of the Securities Regulation Code⁵ (SRC), to wit:

23.2. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to the issuer, **any profit realized by him from any purchase or sale, or any sale or purchase, of any equity security of such issuer within any period of less than (6) months unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer**, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted before the Regional Trial Court by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than two years after the date such profit was realized. This Subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection. (Emphasis supplied)

Respondents averred that Mr. Ongpin used his position as Director and Vice-Chairman of PMC to obtain information not available to the general public for the purpose of making short-swing profits.⁶ On November 5, 2009, he purchased Fifty Million (50,000,000) PMC shares from the Development Bank of the Philippines (DBP) at the price of ₱12.75 per share, with the sale registered in the name of petitioner Goldenmedia.⁷ In less than six months, on December 2, 2009, a Share Purchase Agreement⁸ was executed between sellers Mr. Ongpin, Goldenmedia, Boerstar Corporation, Elkhound Resources, Inc., Walter Brown, and DBP, and the buyer Two Rivers Pacific Holdings Corporation (Two Rivers) for 9.24% stake in PMC⁹ or Four Hundred Fifty Two Million Eighty Eight Thousand One Hundred Sixty (452, 088,160) PMC shares at the price of ₱21.00 per share.¹⁰

Upon learning about the foregoing transaction, Atty. Ongkiko wrote to PMC on October 7, 2011, requesting it to confirm within seven days if it will institute a suit to recover the short-swing profits made by petitioners herein.¹¹ Atty. Ongkiko again wrote PMC on November 21, 2011, stating

⁵ Approved: July 19, 2000.

⁶ *Rollo* (Vol. I), p. 114.

⁷ *Id.* at 113.

⁸ *Id.* at 123-140.

⁹ *Id.* at 151.

¹⁰ *Id.* at 113.

¹¹ *Id.* at 115.

that should the latter fail to initiate any action to recover the said profits, he will exercise the right to file suit pursuant to Section 23.2 of the SRC.¹² Having received no confirmation from PMC, Atty. Ongkiko thus filed the instant Complaint¹³ on December 7, 2011 through his Attorney-in-Fact, Atty. Ongkiko-Acorda, praying that petitioners be declared as having engaged in short-swing transactions under Section 23.2 of the SRC, and ordering them to return to PMC all profits realized through the said transactions, including interest.

In their Answer with Counterclaims,¹⁴ petitioners argued several points. *Firstly*, they argued that the Regional Trial Court (RTC) does not have jurisdiction over the Complaint due to respondents' deliberate refusal to pay the correct filing fees.¹⁵ *Secondly*, respondents failed to comply with the condition precedent for the institution of a derivative suit under Section 23.2 of the SRC, the condition being that the request to file suit should be served on the company at least 60 days before the expiration of the two-year period.¹⁶ *Thirdly*, the complaint failed to state a cause of action. *Fourthly*, petitioners averred that PMC is estopped from recovering the so-called short-swing profits realized by Mr. Ongpin due to the representation in the Special Power of Attorney (SPA) that the performance of obligations therein do not and will not violate any applicable laws. *Lastly*, petitioners averred that the derivative suit is a nuisance or harassment suit.

Petitioners thus filed a Motion to Expunge Complaint and Modes of Discovery,¹⁷ against which respondents filed a Motion to Expunge/Strike Out Motion to Expunge Complaint on the ground that it is a Motion to Dismiss in disguise, which is a prohibited pleading in intra-corporate controversies.¹⁸

The Motion to Expunge Complaint and Modes of Discovery was denied by the RTC in its Resolution¹⁹ dated April 3, 2012, to wit:

WHEREFORE, premises considered, the Motion to Expunge Complaint filed by defendants is hereby **DENIED** on both procedural and substantive grounds.

X X X X

SO ORDERED.²⁰

¹² Id.

¹³ Id. at 110-116.

¹⁴ Id. at 144-181.

¹⁵ Id. at 153-160.

¹⁶ Id. at 161-162.

¹⁷ Id. at 308.

¹⁸ Id.

¹⁹ Id. at 308-312. Penned by Presiding Judge Maria Rowena Modesto-San Pedro.

²⁰ Id. at 312.

The RTC held that a Motion to Expunge is like a Motion to Dismiss, which is a prohibited pleading in intra-corporate controversies.²¹ Thus, the Motion to Expunge cannot be allowed. Moreover, it would be unduly burdensome to require complete payment of filing fees from a minority stockholder filing a derivative suit, as this might discourage such filing.²² The RTC invoked equity and judicial wisdom in allowing the instant derivative suit, in order to enable the policing of corporate management.²³ Further, jurisprudence provides that the trial court still acquires jurisdiction over the case as long as the plaintiff settles the deficiency assessment.²⁴

Respondents then filed a Petition for *Certiorari* and Prohibition²⁵ before the CA to which the petitioners filed a Comment²⁶ in opposition. In its Decision²⁷ dated October 24, 2012, the CA affirmed the RTC and dismissed the said petition. It held that the RTC did not commit any grave abuse of discretion in disallowing petitioners' Motion to Expunge as it has the same effect as a Motion to Dismiss, thus it can be similarly treated as a prohibited pleading.²⁸ The CA added that the non-specification of the amounts of damages does not immediately divest the trial court of jurisdiction over the case as long as the plaintiff has no bad faith or intent to defraud the government.²⁹ Section 2, Rule 141 of the Rules of Court was cited, which provides that:

Sec. 2. *Fees in Lien.* Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned **shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien[.]**³⁰

Hence, this Petition.

In their Comment³¹ on the Petition for Review, respondents argue that: (1) the said petition raises questions of fact; (2) the Motion to Expunge is in the nature of a Motion to Dismiss which is prohibited in intra-corporate controversies; (3) the filing fees they paid are correct; (4) the case of *Manchester Development Corporation v. Court of Appeals*³² is inapplicable; (5) the trial court retains jurisdiction over the case even with incorrect filing fees; (6) the remedy is to direct PMC to pay the deficiency in filing fees; (7)

²¹ Id. at 309.

²² Id. at 310.

²³ Id. at 311.

²⁴ Id. at 310.

²⁵ Id. at 313-368.

²⁶ Id. at 370-415.

²⁷ Id. at 97-109.

²⁸ Id. at 101.

²⁹ Id. at 104.

³⁰ Emphasis supplied.

³¹ *Rollo* (Vol. II), pp. 584-652.

³² 233 Phil. 579 (1987).

the meritorious case should not be dismissed on a mere technicality, and that (8) petitioners are not entitled to the grant of a TRO.

In their Reply,³³ petitioners counter that: (1) the derivative suit is a mere nuisance and harassment suit to get back at petitioner Mr. Ongpin; (2) the Petition for Review on *Certiorari* does not raise questions of fact; (3) a Motion to Dismiss based on lack of jurisdiction is not prohibited; (4) Section 7(a) of Rule 141 and not Section 7(b) applies in computing filing fees; (5) respondents acted in bad faith when they omitted the amount of short-swing profits sought to be recovered; and (6) payment of filing fees cannot be liberally construed for respondents since they acted in bad faith and were unwilling to settle the deficiency.

The main issue for this Court's consideration is whether or not the CA erred in finding that the RTC did not commit grave abuse of discretion when it denied petitioners' Motion to Expunge Complaint. To resolve this main issue, We must address the sub-issues of (1) propriety of the Motion to Expunge and (2) sufficiency of filing fees.

Both the RTC and the CA denied petitioners' Motion to Expunge Complaint on the ground that it is similar to a Motion to Dismiss, which is a prohibited pleading under the Interim Rules of Procedure for Intra-corporate Controversies (Intra-corporate Rules) or A.M. No. 01-2-04-SC,³⁴ to wit:

Sec. 8. *Prohibited Pleadings* – The following pleadings are prohibited:

1. Motion to Dismiss;

x x x x

Petitioners argue, however, that despite this prohibition, a court may *motu proprio* dismiss a case at any time for lack of jurisdiction.³⁵ The prohibition against a Motion to Dismiss cannot confer jurisdiction on the trial court, where there is none due to insufficient filing fees paid beyond the prescriptive period.³⁶

Respondents counter that the prohibition against the filing of a Motion to Dismiss is absolute regardless of the ground on which it is based.³⁷ Petitioners' designation of their pleading as a "Motion to Expunge" instead of a "Motion to Dismiss" is a circumvention of the Intra-corporate Rules.³⁸

³³ Id. at 840-882.

³⁴ Effective: April 1, 2001.

³⁵ *Rollo* (Vol. I), pp. 36-37.

³⁶ Id. at 39.

³⁷ *Rollo* (Vol. II), pp. 619- 620.

³⁸ Id. at 621.

Moreover, it is not the caption of the pleading but its allegations that are controlling.³⁹

The Petition has merit.

While We agree with respondents that a Motion to Expunge is in the nature of a Motion to Dismiss which is prohibited under the Intra-corporate Rules, petitioners are correct in pointing out that this Court may *motu proprio* dismiss a case when the ground invoked is lack of jurisdiction over the subject matter:

RULE 9

Effect of Failure to Plead

SECTION 1. *Defenses and Objections Not Pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter,** that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the claim.** (Emphasis supplied)

This brings Us to the matter of filing fees, the payment of which has always been recognized as essential in the court's jurisdiction.⁴⁰ Petitioners argue that respondents' payment of filing fees in the amount of ₱4,325.00 is insufficient since the short-swing profits sought to be recovered amount to ₱412,500,000.00.⁴¹ They point to Section 7(a) of Rule 141 of the Rules of Court which provides that:

Section 7. *Clerks of Regional Trial Courts.* —

- (a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, etc., complaint, or a complaint in intervention, and for all clerical services in the same, **if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:**

x x x x

7. ₱350,000.00 or more but not more than ₱400,000.00: ₱4,500.00

8. For each ₱1,000.00 in excess of ₱400,000.00: ₱20.00

³⁹ Id.

⁴⁰ *The Department of Foreign Affairs, represented by Undersecretary Rafael E. Seguis, v. the Commission on Audit*, G.R. No. 194530, July 7, 2020.

⁴¹ *Rollo* (Vol. I), p. 43.

Based on the foregoing, respondents should have paid filing fees in the amount of ₱8,246,500.00, and not the meager ₱4,325.00.⁴² Petitioners argue that the lower courts erred in allowing the deficiency to be considered a lien on the judgment as such lien can only apply to unspecified damages that arise after the filing of the complaint, not to claims that could have been specified or estimated at the time the complaint is filed.⁴³ They further argue that any deficiency in filing fees cannot be paid beyond the prescriptive period,⁴⁴ and that respondents showed bad faith and are not willing to pay the correct filing fees.⁴⁵

On the other hand, respondents insist that the filing fees paid in the amount of ₱4,325.00 is correct and that there is no deficiency to speak of.⁴⁶ Since a derivative suit seeks to enforce a corporate cause of action, it is an action for specific performance, rather than one for recovery of damages or property.⁴⁷ Thus, Section 7(b) and not Section 7(a) of Rule 141 applies:

(b) For filing

1. Actions where the value of the subject matter cannot be estimated:
₱750.00;

x x x x

Further, Attys. Ongkiko-Acorda and Ongkiko argue that they are mere nominal parties who will not receive the short-swing profits that will be returned to PMC.⁴⁸ As such, only a minimal filing fee should be charged to them, otherwise stockholder activism in policing corporate management will be dampened.⁴⁹

Assuming that the correct filing fees amount to ₱8,246,500.00 instead of a meager ₱4,325.00, respondents argue that jurisdiction was still acquired over the case as the deficiency may be considered a lien on the judgment.⁵⁰ However, if a lien cannot be considered, respondents insist that it should be PMC, as the real party in interest, who should pay the deficient filing fees.⁵¹ Above all, the case at hand is a matter of public interest that must not be dismissed on a mere technicality.⁵²

⁴² Id. at 45.

⁴³ Id. at 47.

⁴⁴ Id. at 65.

⁴⁵ Id. at 69.

⁴⁶ *Rollo* (Vol. II), p. 624.

⁴⁷ Id. at 629-630.

⁴⁸ Id. at 624.

⁴⁹ Id. at 624-625.

⁵⁰ Id. at 640.

⁵¹ Id. at 643.

⁵² Id. at 644.

This Court finds more weight in petitioners' arguments. A discussion of the rules governing the payment of filing fees is in order.

At the outset, We emphasize that exceptions granting liberality for insufficient payment are *strictly* construed against the filing party.⁵³ This rule underpins the foregoing discussion.

In the case of *Manchester Development Corporation v. Court of Appeals*,⁵⁴ it was held that:

... henceforth all complaints, petitions, answers and other similar pleadings **should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer**, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record.

The Court **acquires jurisdiction over any case only upon the payment of the prescribed docket fee**⁵⁵.... (Emphases supplied)

This was relaxed in the case of *Sun Insurance Office, Ltd. v. Asuncion (Sun Insurance Office, Ltd.)*:⁵⁶

In the present case, a more liberal interpretation of the rules is called for considering that, unlike Manchester, private respondent **demonstrated his willingness to abide by the rules by paying the additional docket fees as required.**

X X X X

Thus, the Court rules as follows:

1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the **payment of the prescribed docket fee, that vests a trial court with jurisdiction** over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, **the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.**

X X X X

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards **a claim not**

⁵³ *Heirs of Renato P. Dragon v. The Manila Banking Corp.*, G.R. No. 205068, March 6, 2019.

⁵⁴ *Supra* note 32.

⁵⁵ *Id.*

⁵⁶ *Sun Insurance Office, Ltd. v. Asuncion*, 252 Phil. 280 (1989).

specified in the pleading, or if specified the same has been **left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment.** It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.⁵⁷
(Emphases supplied)

Recent jurisprudence reiterates the parameters for invocation of a liberal approach towards payment of filing fees, with the caveat that such is still the exception to the general rule that filing fees must be paid in full at the time the initiatory pleading is filed.⁵⁸ Summarily, the liberal approach under the case of *Sun Insurance Office, Ltd.* can only be invoked when: (1) the claim on which the fees are based *cannot* be specified or estimated at the time the complaint is filed,⁵⁹ or the claim arises *after* said complaint is filed;⁶⁰ (2) the filing party is in good faith with no intent to defraud the government,⁶¹ and has shown his or her willingness to pay the full docket fees;⁶² and (3) in all cases, the fees must be fully settled within the prescriptive period.⁶³

Before determining if the case before Us satisfies the abovementioned criteria, we must first settle the correct amount of filing fees. Petitioners point to Section 7(a) of Rule 141 as the basis for computation, which applies to cases claiming a stated sum or property value. Respondents point to Section 7(b) of Rule 141, which applies to claims incapable of pecuniary estimation. The case of *Dee vs. Harvest All Investment Limited*⁶⁴ is instructive:

In determining whether an action is one **the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought.** If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the [C]ourts of [F]irst [I]nstance would depend on the amount of the claim. However, **where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases**

⁵⁷ Id.

⁵⁸ *Heirs of Renato P. Dragon v. The Manila Banking Corporation*, supra.

⁵⁹ *Ceferina de Ungria [deceased] v. the Honorable Court of Appeals*, 669 Phil. 585, 597 (2011).

⁶⁰ *Metropolitan Bank and Trust Co. v. Perez*, 625 Phil. 580, 585 (2010).

⁶¹ Id.

⁶² *Chua v. Spouses Philip L. Go and Diana G. Go*, G.R. No. 244140. February 3, 2021.

⁶³ *Alpha Plus International Enterprises Corporation v. Philippine Charter Insurance Corporation*, G.R. No. 203756, February 10, 2021.

⁶⁴ *Dee v. Harvest All Investment Limited*, 807 Phil. 572 (2017).



where the subject of the litigation may not be estimated in terms of money....⁶⁵

Here, the prayer in respondents' Complaint seeks to:

2. Ordering defendants to **return** to Philex Mining Corporation **any and all profits** realized by them through these short-swing transactions, including interest, pursuant to Section 23.2 of the Securities Regulation Code.

Since respondents seek the return of the short-swing profits, it follows that their claim is for the recovery of a certain sum of money, and is thus undeniably a claim capable of pecuniary estimation. Thus, Section 7(a) of Rule 141 applies, which computation would result in docket fees in the amount of ₱8,246,500.00. This means the filing fees of ₱4,325.00 paid by respondents is deficient.

The next question that must then be addressed is whether or not the deficiency in filing fees may be considered a lien on the judgment. At this point, We must determine if the circumstances satisfy the three fold criteria put forth earlier for a liberal approach towards filing fees.

Firstly, can respondents' claim be specified or even just estimated at the time of filing of the complaint? We find in the affirmative. The Complaint itself alleges that fifty million (50,000,000) PMC shares were purchased by Mr. Ongpin at the price of ₱12.75 per share.⁶⁶ It was also averred that the said shares were sold at the price of ₱21.00 per share.⁶⁷ Thus:

Selling Price:	50,000,000 x 21.00 =	1,050,000,000.00
		-
Purchase Price:	50,000,000 x 12.75 =	637,500,000.00
	Profit =	412,500,000.00

The short swing profits sought to be recovered by respondents for PMC can easily be computed as such, and yet this was not provided in the body and prayer of the Complaint. Further, it cannot be said that the said profit arose only after the Complaint was filed as the sale occurred as early as December 2, 2009.⁶⁸ Hence, respondents were unable to satisfy the first criterion.

⁶⁵ Id. at 583, citing *Cabrera v. Francisco*, 716 Phil. 574, 586-587 (2013).

⁶⁶ *Rollo* (Vol. I), p. 112.

⁶⁷ Id. at 113.

⁶⁸ Id.

Secondly, did respondents show good faith with no intent to defraud the government, and are they willing to pay the full docket fees? Jurisprudence has defined good faith as a state of mind denoting honest intention to abstain from taking any unconscientious advantage of another.⁶⁹ It is determined not by the person's own protestations of his [or her] good faith which are self-serving, but by evidence of his [or her] external acts and conduct.⁷⁰ Here, We find it curious that respondents were able to specify the selling price (₱21.00)⁷¹ and purchase price (₱12.75)⁷² of each share, but failed to specify the total profit earned by Mr. Ongpin. As shown by the computation above, such amount could have easily been averred in the body and prayer of the Complaint. This glaring omission thus belies any claim of good faith.

Are respondents willing to pay the full docket fee of ₱8,246,500.00? In their Comment, they declare that "even granting *arguendo* that the correct amount of filing fee may not be considered a lien on the judgment, the proper recourse is not to dismiss the case in the court *a quo*, as prayed for by petitioners-defendants, **but to direct the real party in interest, Philex Mining Corporation, to pay the deficiency.**"⁷³ This statement contradicts any willingness to pay the docket fees, which is in contrast with the circumstances in the case of *Sun Insurance Office, Ltd.*,⁷⁴ wherein private respondent demonstrated his willingness to abide by the rules by paying the additional docket fees. Respondents thus failed to satisfy the second criterion.

Thirdly, were the filing fees fully settled within the prescriptive period? Here, respondents filed their Complaint under Section 23.2 of the SRC which provides that "no such suit shall be brought more than two (2) years after the date such profit was realized."⁷⁵ The Complaint was filed on December 7, 2011, exactly two years from December 7, 2009, the date when the profits were realized as averred by respondents.⁷⁶ However, respondents have not settled the deficiency in filing fees until today, nor do they show any willingness to do so. Since the two-year period has already prescribed, respondents also failed to satisfy the third criterion.

All in all, the circumstances in the case before Us fail to convince this Court that a liberal interpretation of the rules on filing fees can be invoked by respondents. Even if it can be invoked, the time for such has prescribed. While We believe in the cause of stockholder activism championed by respondents, We cannot allow what the law does not.

⁶⁹ *Social Security System v. Commission on Audit*, G.R. No. 243278, November 3, 2020.

⁷⁰ *Cabibihan v. Allado*, G.R. No. 230524, September 1, 2020.

⁷¹ *Rollo* (Vol. I), p. 113.

⁷² *Id.* at 112.

⁷³ *Rollo* (Vol. II), p. 643.

⁷⁴ *Supra* note 53.


⁷⁵ SECURITIES REGULATION CODE, Section 23.2.

⁷⁶ *Rollo* (Vol. I), p. 114.

WHEREFORE, the present Petition for Review on *Certiorari* is **GRANTED**. The Decision dated October 24, 2012 of the Court of Appeals in in C.A.-G.R. SP No. 124683 is hereby **REVERSED** and **SET ASIDE**. The Complaint denominated as SEC Case No. 11-166 dated December 2, 2011 is hereby expunged from the record.

SO ORDERED.” *Hernando, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

341

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