

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PHILIPPINE AIRLINES, INC.
(PAL),

Petitioner,

-versus-

FREDERICK YAÑEZ,
Respondent.

G.R. No. 214662

Present:

LEONEN, *Chairperson*
LAZARO-JAVIER,
M. LOPEZ,
J. LOPEZ, and
KHO, JR., *JJ.*

Promulgated:

March 2, 2022

Misael De Bata

X-----X

DECISION

LOPEZ, J.:

In this Petition for Review on *Certiorari*,¹ Philippine Airlines Inc. (PAL) questions the Court of Appeals (CA) Decision dated March 14, 2013,² and Resolution dated September 25, 2014,³ in CA G.R. SP No. 05657, which declared Frederick Yañez's (Yañez) suspension invalid.

¹ *Rollo*, pp. 45-87.

² Id at pp. 8-17. Penned by Associate Justice Maria Elisa Sempio-Diy, with the concurrence of now Supreme Court Associate Justice Ramon Paul Hernando and Associate Justice Carmelita Salandan Manahan.

³ Id. at 41-42. Penned by Associate Justice (now Supreme Court Associate Justice) Ramon Paul Hernando, with the concurrence of Associate Justices Ma. Luisa Quijano-Padilla and Marie Christine Azcarraga-Jacob.

Y

Antecedents

On May 7, 2008, Yañez, Supervisor of PAL Passenger Handling Division, received a notice containing the summary of an alleged incident between him and flight attendant Nova Sarte (Sarte). Sarte reported that during their ground stop before boarding for their return flight on May 6, 2008, Yañez inserted his hand in her right armpit, pressed her arm repeatedly, and touched the side of her breast. Sarte also claimed that it was not the first time that Yañez unnecessarily touched her and that there were other incidents of inappropriate touching as early as her probationary period.⁴ There was even an incident when Yañez allegedly barged in the lavatory while she was inside to look at the mirror.⁵

Yañez vehemently denied the charges against him. He claimed that he boarded the plane for inspection after the last passenger deplaned. He then called the attention of two flight attendants to ask something. Since the flight attendants did not respond after he repeatedly said, "excuse me," he tapped Sarte's shoulder twice. Sarte, however, just looked at him and walked calmly towards the galley.⁶

In a Notice of Administrative Charge dated October 13, 2008, Yañez was formally charged with violating Article 51⁷ of PAL's Revised Code of Discipline on Sexual Harassment.⁸ Despite Manager Melba Sainz's (Sainz) repeated prodding for him to apologize, Yañez refused to do so and insisted he did nothing wrong.⁹

On October 15, 2008, Sainz served a memo to Yañez advising him of the administrative charges against him and notified him of the scheduled administrative hearing on October 27, 2008 in Pasay City. Yañez requested that the clarificatory hearing be transferred to Mactan, Cebu. However, since several investigating committee members and participants were based in Manila, the management of PAL informed him that the hearing would proceed in Pasay City. PAL then offered Yañez plane fare and free accommodation, but he merely reiterated his request for a resetting and transfer of venue. Later, the hearing

⁴ Id. at 117–118.

⁵ Id. at 311.

⁶ Id. at 9–10.

⁷ Article 51 Sexual Harassment

Any employee who commits sexual harassment upon his/her co-official, co-employee, applicant for employment or nay other customer or supplier of the company shall be penalized as prescribed in the schedule of penalties under Article 14 of this Code depending upon the gravity of the offense. "Sexual harassment" is defined as any act covered by the provisions or Republic Act No 7877 or more explicitly any unwanted or unwelcome sexual advance, demand, request or sexual favor or other act or conduct of sexual in nature whether written, oral or physical and such act:

1. Is committed to take advantage of the weakness, vulnerability, status and professional, social, and economic standing of the official, employee, or client; or
2. Is explicitly or implicitly imposed as a condition for securing employment, advancement, promotion, assistance, services or preferential treatment; or
3. **Interferes adversely with the official's or employee's performance; or**
4. **Is bound to create a hostile, offensive, intimidating or uncomfortable work environment.** (emphases supplied)

⁸ *Rollo*, p. 311.

⁹ Id. at 309.

proceeded in Pasay City, with Sarte presenting her recollection of the incident.¹⁰

Another clarificatory hearing was scheduled in Mactan, Cebu, on December 4, 2008, where Yañez appeared with his lawyers. They requested a copy of a transcript of the Pasay hearing, but the investigating committee denied it. Consequently, Yañez refused to testify and walked out of the conference.¹¹

After the investigation, the committee found Yañez liable for violating the PAL Revised Code of Discipline. The committee recommended that he be penalized with three months suspension. Thereafter the Airport Services Department adopted the committee's recommendation.¹² On June 4, 2009, Yañez received a memo informing him of the management's decision.¹³ Dissatisfied, Yañez filed a Complaint for illegal suspension against PAL with a claim for salary during the time of his suspension and moral damages.

On May 19, 2010, the labor arbiter (LA) declared Yañez's suspension valid and reasonable.¹⁴ He was afforded due process after he was given several chances to present his side, but he refused to testify twice during the clarificatory hearings. The LA concluded that Sarte could not have concocted the incident as the matter involved her morality. Rumors regarding the incident would undoubtedly spread within the company, and fabricating such a story would be shameful or damaging to her reputation.¹⁵

On appeal, the National Labor Relations Commission (NLRC) affirmed the LA's findings *in toto*.¹⁶ The decision to suspend Yañez was rendered after a decorum committee investigation, and after PAL management determined that Yañez indeed committed the charge complained of. The imposition of the penalty of suspension was based on the findings and recommendation of the investigating committee and in accordance with the PAL Revised Code of Discipline. Thus, PAL acted within its right as an employer when it decided to impose disciplinary measures on its erring employee.¹⁷ Yañez sought reconsideration, which the NLRC denied in its Resolution dated October 28, 2010.¹⁸

¹⁰ Id. at 432-433.

¹¹ Id. at 433.

¹² Id. at 120.

¹³ Id. at 434.

¹⁴ Id. at 309-315. Penned by Labor Arbiter Arturo M. Camiller.

¹⁵ The dispositive portion of the LA's decision reads

WHEREFORE, in view of the foregoing, a decision is hereby rendered, declaring the suspension for three (3) months of complainant Frederick Yañez as legal. Consequently, the claim for his salary during the period of suspension as well as damages is DISMISSED.

SO ORDERED.

¹⁶ Rollo, pp. 429-439. Penned by Presiding Commissioner Violeta Ortiz-Bantug with the concurrence of Commissioners Aurelio D. Menzon and Julie C. Rendoque.

¹⁷ The dispositive portion of the NLRC decision provides:

WHEREFORE, We find no cogent reason to deviate from the findings of the Labor Arbiter. The decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.

¹⁸ Rollo, p. 525.

Subsequently, Yañez elevated the case to the CA, insisting that the NLRC acted, with grave abuse of discretion in affirming the LA's decision. Yañez asserted that PAL failed to observe procedural due process since the administrative hearing conducted was a sham. Further, the committee refused to provide him with a copy of the transcript from the first hearing.¹⁹ Yañez also contended that his three-month suspension was invalid and unreasonable. According to him, he should not have been found liable for sexual harassment since he does not exercise authority and moral ascendancy over Sarte, neither did he ask for sexual favors or advances.

On March 14, 2013, the CA reversed the NLRC's findings and ruled that in formally charging Yañez with sexual harassment, PAL should have proceeded in the manner specifically laid down under Republic Act (RA) No. 7877,²⁰ also known as the "Anti-Sexual Harassment Act of 1995." Section 4²¹ of the law requires PAL to create a committee specifically tasked to investigate the charge of sexual harassment against Yañez. The CA noted that PAL does not have rules and regulations prescribing the procedure for investigating sexual harassment cases.²² The *Notice of Administrative Charge and Resolution to Administrative Charge* sent to Yañez referred to sexual harassment as an offense under the PAL Revised Code of Discipline. Yet, PAL failed to provide specific excerpts or copies of the code of discipline pertaining to the charge,²³ viz.:

Unfortunately, several years after the law took effect in 1995, no compliance has been made by respondents with regard to their duty under R.A. No. 7877. Nowhere in the records was it mentioned that there was a committee specifically created by respondents to investigate the charge of sexual harassment against petitioner, following the composition outlined in the law.

¹⁹ Id. at 484-485.

²⁰ Entitled "AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT, AND FOR OTHER PURPOSES," February 14, 1995.

²¹ SECTION 4. Duty of the Employer or Head of Office in a Work-related, Education or Trainings Environment. – It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:

(a) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

The said rules and regulations issued pursuant to this subsection (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

(b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainers and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.

In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank-and-file employees.

In the case of the educational or training institution, the committee shall be composed of at least one (1) representative from the administration, the trainers, teachers, instructors, professors or coaches and students or trainees, as the case may be.

The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

²² Rollo, p. 12.

²³ Id. at 13.

No mention was also made by respondents regarding any rules and regulations promulgated by Philippine Airlines prescribing the procedure for the investigation of sexual harassment cases. The "Notice of Administrative Charge" and "Resolution to Administrative Charge" sent by respondents to petitioner only referred to sexual harassment as an offense under the PAL Code of Discipline. However, no copy of the PAL Code of Discipline or pertinent excerpts thereof invoked by respondents, exists in the record. In their Comment, respondents made reference to documents which were attached to their Position Paper but no copy of said Position Paper and its attachments is attached to the Comment. Needless to say, the Court cannot consider pieces of documentary evidence which are not even appended to respondents' Comment.²⁴

What exists in the record is a copy of the sexual harassment policy in the Personnel Policies and Procedures Manual of Philippine Airlines. Even assuming that said policy was promulgated by PAL to implement R.A. No. 7877, respondents have not sufficiently shown compliance therewith. PAL's policy on sexual harassment provides.²⁵

3. Investigation of Complaints

The superior shall immediately investigate any sexual harassment complaint brought to his attention and shall take whatever steps necessary to remedy the situation, including the **imposition of disciplinary action as provided by law and/or the Company's Code of Discipline.**

The investigation shall be conducted in a timely, thorough, and fair manner, with consideration of the rights and emotions of all the parties involved, and **strictly in accordance with the established company rules and procedures on Administrative Investigations.** (Emphasis supplied)²⁶

The provision above-quoted mandates that the conduct of investigation shall be "strictly in accordance with the established company rules and procedures on Administrative Investigations." It also makes reference to "imposition of disciplinary action as provided by law and/or the Company's Code of Discipline." But then again, as earlier mentioned, the PAL Code of Discipline or any established company rules and procedures on administrative investigations are wanting in the record. This brings Us back to R.A. No. 7877, for even if there were indeed rules and regulations on sexual harassment promulgated by PAL, the same were precisely intended to implement the provisions of R.A. No. 7877. Simply stated, such rules and regulations cannot stand on their own and should be in consonance with the law.²⁷

x x x x

WHEREFORE, premises considered, the petition is GRANTED. The assailed Resolutions of the public respondent dated September 22, 2010 and October 28, 2010 are SET ASIDE. Respondents are directed to pay petitioner's salary and all benefits due him for the period during which he was illegally suspended.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

SO ORDERED.²⁸

Further, RA No. 7877 requires that the harasser in a work environment be an employer, manager, supervisor, agent of the employer, or any other person who exercises authority, influence, or moral ascendancy over the victim.²⁹ In this case, Yañez occupies a supervisor position, but he is not Sarte's supervisor or senior.

Unsuccessful at a reconsideration,³⁰ PAL elevated the case to this Court. PAL maintains that Yañez was given ample opportunity to explain his side and was not deprived of due process. Contrary to the CA's findings, PAL said, it created a committee specifically tasked to investigate the incident following Section 4 of RA No. 7877. PAL argued that its sexual harassment policy in the Personnel Policies and Procedures Manual and Revised Code of Discipline sufficiently complies with rules and procedures mandated by law. Moreover, under PAL's Revised Code of Discipline, sexual harassment was expanded to cover even customers and suppliers and is broader compared to RA No. 7877. Verily, to limit the definition of sexual harassment to what is provided under RA No. 7877 is tantamount to an encroachment on PAL's management prerogative, which necessarily includes the power to discipline its employees. Since PAL's decision to suspend Yañez is the management's prerogative and was reached after a thorough investigation and consideration of the circumstances, his three-month suspension should be upheld. Furthermore, PAL maintained that Yañez was not deprived of due process since he was apprised of the charges and was given ample opportunity to be heard.

On January 21, 2015, the Court required Yañez to comment.³¹ However, after several unsuccessful attempts to serve the compliance,³² the Court, on June 3, 2019, resolved to waive Yañez's filing of comment on PAL's petition.³³

Ruling

The Petition is meritorious.

We emphasize that the decisions of the NLRC are reviewable by the CA only through a special civil action for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction. When the CA reviews an NLRC decision, it is limited to the

²⁸ Id. at 16.

²⁹ SECTION 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act. xxx (Anti-Sexual Harassment Act of 1995, Republic Act No. 7877, February 14, 1995).

³⁰ *Rollo*, pp. 41–42, Resolution dated September 25, 2014.

³¹ Id. at 757.

³² Id. at 782–783, 787, 808.

³³ Id. at 823.

question of whether the NLRC acted arbitrarily, whimsically, or capriciously. It does not entail looking into the correctness of the judgment of the NLRC on the merits. Necessarily, when the CA decision is brought to the Court through a Petition for Review on *Certiorari* under Rule 45, the question of law presented to the Court is whether the CA correctly found that the NLRC acted with grave abuse its discretion in rendering its judgment.³⁴

In essence, the Court is tasked to determine whether the CA correctly found grave abuse of discretion on the part of the NLRC when it ruled that Yañez was validly suspended.³⁵ Bearing these principles in mind, the Court finds that the CA erred in reversing the NLRC, and the NLRC did not gravely abuse of its discretion when it affirmed the findings of the LA.

PAL observed due process

The labor tribunals aptly observed that Yañez was adequately apprised of the charges against him and given an opportunity to explain his side. First, PAL notified Yañez of Sarte's May 7, 2008 incident report. They also served him with a memorandum citing the report and the provisions of the PAL Revised Code of Discipline, which were allegedly violated. In fact, Yañez submitted a written response vehemently denying the allegations. Second, Yañez was advised of the October 27, 2008 clarificatory hearing in Pasay City. PAL explained to him the reasons for denying his request to transfer the venue to Mactan, Cebu, and the management offered him airfare and free lodging so that he could attend. Yet, Yañez still did not appear at the scheduled hearing. Third, PAL scheduled another hearing, this time in Mactan, to give Yañez an opportunity to present his side, but Yañez and his counsel staged a walk out. Since it was Yañez who refused to attend the scheduled hearings, he cannot, later on, complain that he was unduly silenced. Indeed, due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard.³⁶ The essence of due process is simply an opportunity to explain one's side or the chance to seek a reconsideration of the action or ruling complained of. It safeguards not the lack of previous notice but the denial of the opportunity to be heard. As long as the party was afforded the opportunity to defend his interests in due course, there is no denial of due process.³⁷

PAL complied with the requirements of RA No. 7877 on the procedure for investigating sexual harassment complaints.

³⁴ *Riingen v. Western Union Financial Services (Hong Kong) Limited, Philippines Representative Office*, G.R. No. 252716, March 3, 2021.

³⁵ *Alvarez v. Magsaysay Maritime Corp.*, G.R. No. 248661 (Notice), July 28, 2021.

³⁶ *The Coca-Cola Export Corp. v. Gacayan (Resolution)*, 667 Phil. 594-609 (2011), citing *Pepsi Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission*, 317 Phil. 461 (1995).

³⁷ *National Power Corp. Board of Directors v. Commission on Audit*, G.R. No. 218052, January 26, 2021.

Preliminarily, sexual harassment under Section 3³⁸ of RA No. 7877 may give rise to civil, criminal, and administrative liability, and an action for each can proceed independently of the others.³⁹ Moreover, Section 6⁴⁰ authorizes the institution of an independent civil action for damages and other affirmative relief.⁴¹ In *Domingo v. Rayala*,⁴² we emphasized that the employee's liability for an administrative offense of sexual harassment should not be determined solely based on Section 3 of RA No. 7877. Substantial evidence to support the administrative charge is sufficient. Thus, the "demand, request, or requirement of a sexual favor" requirement in Section 3 is not essential before an act can be qualified as sexual harassment in an administrative charge. It is enough that the respondent's actions created an intimidating, hostile, or offensive environment for the employee.

Similarly, the instant case is an administrative case, not a criminal infraction, of sexual harassment. Yañez was charged with violation of Article 51 of PAL's Revised Code of Discipline, which provides:⁴³

Article 51 - Sexual Harassment

Any employee who commits sexual harassment upon his/her co-official, co-employee, applicant for employment or nay other customer or supplier of the company shall be penalized as prescribed in the schedule of penalties under Article 14 of this Code depending upon the gravity of the offense. "Sexual harassment" is defined as any act covered by the provisions or Republic Act No 7877 or more explicitly any unwanted or unwelcome sexual advance, demand, request or sexual favor or other act or conduct of sexual in nature whether written, oral or physical and such act:

1. Is committed to take advantage of the weakness, vulnerability, status and professional, social, and economic standing of the official, employee, or client; or
2. Is explicitly or implicitly imposed as a condition for securing

³⁸ Sec. 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or training-related sexual harassment is committed by an employer, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
- (2) The above acts would impair the employee's rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

³⁹ See *Domingo v. Rayala*, 569 Phil. 423-458 (2008).

⁴⁰ SECTION 6. Independent Action for Damages. — Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief. (Anti-Sexual Harassment Act of 1995, Republic Act No. 7877, February 14, 1995).

⁴¹ *Domingo v. Rayala*, supra note 39.

⁴² Supra.

⁴³ *Rollo*, pp. 148, 193, 434-435.

employment, advancement, promotion, assistance, services or preferential treatment; or

3. Interferes adversely with the official's or employee's performance; or

4. Is bound to create a hostile, offensive, intimidating or uncomfortable work environment. (Emphases supplied.)

Thus, it is not necessary that sexual favors or advances are made to constitute an act of sexual harassment. It is enough that Yañez's inappropriate conduct towards Sarte on May 6, 2008, and in other instances, created a hostile work environment and uneasy feeling upon Sarte, which affected her job. It came to a point where Sarte would get anxious every time she attended a Cebu flight and often requested other flight attendants to exchange with her supposed schedule or post just to avoid interacting with Yañez.⁴⁴ Verily, the investigating committee found Sarte's testimony credible, and the labor tribunals arrived at a similar conclusion.

Also, we hold that PAL substantially complied with the rules provided by Section 4 of RA No. 7877 concerning the resolution, settlement, or prosecution of acts of sexual harassment, where employers are specifically mandated to:

(a) **Promulgate appropriate rules and regulations** in consultation with and jointly approved by the employees x x x, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.

x x x x

(b) **[C]reate a committee on decorum and investigation** of cases on sexual harassment. x x x

In the case of a work-related environment, the **committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.** (Emphases supplied)

x x x x

The records show that PAL has its own Sexual Harassment Policy embedded in its Personnel Policies and Procedures Manual⁴⁵ in relation to its Revised Code of Discipline. A copy of the pertinent provisions was submitted with PAL's position papers and formed part of the CA records. PAL created a committee on decorum and investigation following the parameters set forth by RA No. 7877. The investigating committee comprised a union officer from the Flight Attendants and Stewards Association of the Philippines (FASAP), two union officers from the Philippine Airlines Employees Association (PALEA), a representative from Human Resource Management, a representative from the

⁴⁴ Id. at 26.

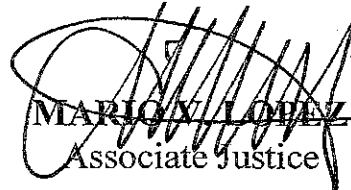
⁴⁵ Id. at 285-287.

Airport Services, and a representative from the Cabin Services.⁴⁶ The committee received and evaluated the testimony of the parties and even advocated for their settlement. The decision to suspend Yañez was made only after the committee concluded that he committed acts constitutive of sexual harassment under the PAL Revised Code of Discipline.


Lastly, we emphasize that the imposition of the three-month suspension as a sanction to an erring employee is a valid exercise of management prerogative, provided it is done in good faith, and the employer sufficiently complies with the substantive and procedural requirements laid down by law and jurisprudence. Since PAL was able to establish its compliance with applicable law and rules, the NLRC correctly affirmed the findings of the LA. Consequently, Yañez's three-month suspension should be upheld.


ACCORDINGLY, the Petition is **GRANTED**. The Court of Appeals Decision dated March 14, 2013, and Resolution dated September 25, 2014, in CA G.R. SP No. 05657 are **REVERSED**. Accordingly, the Decision dated September 22, 2010, and Resolution dated October 28, 2010 of the National Labor Relations Commission in NLRC Case No. VAC-07-000385-2010 are **REINSTATED**. Frederick Yañez's suspension for three (3) months is legal, and his claim for salary during the period of suspension as well as damages are dismissed.

SO ORDERED.


MARION N. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


AMY C. LAZARO-JAVIER
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

⁴⁶ Id. at 72-73, 176.

ATTESTATION

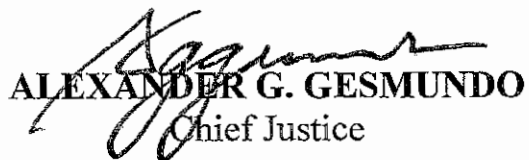
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARVIC M.V.F. LEONEN**

Associate Justice
Chairperson

CERTIFICATION

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

**ALEXANDER G. GESMUNDO**

Chief Justice

