Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **April 12, 2023**, *which reads as follows:*

"G.R. No. 254668 ***(John Carlo F. Galan v. Adventurer's Multi-Purpose Cooperative).*** — Impugned in this Petition for Review on *Certiorari*[1] are the Decision[2] dated March 12, 2020 and the Resolution[3] dated November 25, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 154230, which reversed and set aside the Decision[4] dated September 19, 2017 and the Resolution[5] dated October 30, 2017 issued by the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-002036-17.

The facts of the case are uncomplicated.

The instant legal strife emanated from a Complaint[6] for illegal dismissal, non-payment of service incentive leave, 13th month pay, separation pay, illegal deduction of salary, discrimination, non-remittance of Social Security System, Pag-ibig, and Philheath contributions, with claims for moral and exemplary damages and attorney's fees filed by John Carlo F. Galan (petitioner) against Adventurer's Multi-Purpose Cooperative (respondent).[7]

Petitioner averred that he was hired on July 17, 2015 as one of respondent's painters, for which he was assigned to different sites and locations. He avowed that he was posted in Amaia Series Project in Novaliches and supposedly attained regular employment status on July 17, 2016. This notwithstanding, respondent illegally terminated his employment on September 5, 2016.[8]

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1 *Rollo*, pp. 12-38, Petition for Review on *Certiorari* dated January 27, 2021.

2 Id. at 39-48, CA Decision dated March 12, 2020. Penned by Associate Justice Ronaldo Roberto B. Martin, with the concurrence of Associate Justices Manuel M. Barrios and Perpetua Susana T. Atal-Paño.

3 Id. at 50-52, CA Resolution dated November 25, 2020.

4 Id. at 86-92, NLRC Decision dated September 19, 2017. Penned by Commissioner Nieves E. Vivar-De Castro, with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra.

5 Id. at 97-98, NLRC Resolution dated October 30, 2017.

6 Id. at 190-192, Complaint dated October 4, 2016.

7 Id. at 40, CA Decision dated March 12, 2020, 181-185, Complainant's Position Paper dated January 24, 2017, and 190-191, Complaint dated October 4, 2016.

8 Id. at 39-40, CA Decision dated March 12, 2020, and 68, LA Decision dated February 28, 2017.

For its part, respondent vehemently denied that it illegally dismissed petitioner from employment, positing that petitioner was a project employee who was engaged as a painter for a particular phase of the Amaia Series Project.[9] In support thereof, it presented, *inter alia*, petitioner's Project Employment Contract,[10] the pertinent portions of which provide:

> WHEREAS, the [respondent] has been awarded AMAIA SERIES project by MDC BUILD PLUS (client), to start on July 01, 2015 up to June 30, 2016, hereinafter referred to as the PROJECT TERM;
>
> WHEREAS, in pursuit of the said Project, the [respondent] is in need of cooperative members to perform the projects awarded to it by its clients (*sic*);
>
> WHEREAS, the PROJECT EMPLOYEE, being a bona fide member of the [respondent], offers his/her services to work for the Project of the [respondent];
>
> WHEREAS, the [respondent] accepts the offer subject to such terms and conditions herein set forth;
>
> NOW THEREFORE, for and in consideration of the foregoing premises, the parties herein hereby mutually agree as follows:
>
> POSITION AND JOB DESCRIPTION: the [respondent] deploys the PROJECT EMPLOYEE to the position of PAINTER at the AMAIA SERIES phase of the said project to start on Sept. 18, 2015 until project phase completion for which his/her services is engaged. x x x x.[11] (Underscoring supplied.)

Respondent likewise avouched that it attempted to advise petitioner of the Project's completion, but he intransigently refused to receive such notice.[12] Thereafter, it submitted the required Department of Labor and Employment (DOLE) Termination Report to the nearest Regional Extension Office.[13]

In the Decision[14] dated February 28, 2017, Labor Arbiter (LA) J. Potenciano F. Napeñas, Jr. declared respondent guilty of illegal dismissal. The Labor Arbiter held that, despite being initially hired as a project employee, petitioner became a regular employee as he was permitted to continue working for two months after the completion of the Project. Consequently, petitioner was assigned to another project after June 30, 2016. As a regular employee, "his removal from employment, due to a misplaced perception that he is a project employee, invariably amount[ed] to illegal dismissal." Anent his money claims, the Labor Arbiter ratiocinated that respondent failed to prove

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9 Id. at 40 and 68.
10 Id. at 133, Petitioner's Project Employment Contract.
11 Id. at 68-69, LA Decision dated February 28, 2017.
12 Id. at 40, CA Decision dated March 12, 2020.
13 Id.
14 Id. at 67-73, LA Decision dated February 28, 2017.

the payment of the benefits to which petitioner was entitled.[15] The Labor Arbiter then disposed of the case in this prose:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding [petitioner] to have been illegally dismissed from the service. Accordingly, respondent company, **ADVENTURES *(sic)* MULTI-PURPOSE COOPERATIVE**, is ordered to pay [petitioner], the following:
>
> a) Backwages computed from date of [petitioner's] dismissal up to promulgation of this Decision:
>
> (9/3/16 – 2/28/17)
> [₱]491 x 26 x 5.83 = [₱]74,425.78
> 13th month pay
> [₱]74,425.78 / 12 = [₱]6,202.14
> **[₱]80,627.92**
>
> b) Separation pay equivalent to his one month salary for every year of service:
>
> (9/17/15 – 2/28/17)
> [₱]491 x 26 x 1yr. = [₱]12,766.00
>
> c) Proportionate 13th Month Pay:
>
> 9/17/15 – 9/2/16
> [₱]481 x 26 = [₱]12,506 x 11.5/12 = [₱]11,984.91
>
> d) Attorney's fees equivalent to 10% of the total monetary awards.
>
> The complaint against x x x **JOHN ERICSON MENDOZA**, is hereby dismissed for lack of factual and legal basis.
>
> The complaint filed by x x x **JASON R. BUCATCAT** is dismissed with prejudice for lack of interest.
>
> The rest of the claims are denied for lack of factual and legal basis.
>
> **SO ORDERED**.[16]

Aggrieved, respondent sought recourse before the NLRC, which affirmed the Labor Arbiter's verdict. Echoing the Labor Arbiter's findings, it discerned that the extension of petitioner's engagement after the lapse of the initial duration, *i.e.*, June 30, 2016, indicated that he already attained regular status. While it was stipulated in his contract that petitioner's work was "until project phase completion," this only meant that the Project's completion should not exceed the contractual period agreed upon by the parties.[17]

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[15] Id. at 69-72.
[16] Id. at 72-73.
[17] Id. 90-91, NLRC Decision dated September 19, 2017.

Seeking to rectify this perceived error, respondent moved for a reconsideration,[18] but the same was brushed aside by the labor tribunals.[19]

Unflinching, it elevated the case to the CA *via* a Petition for *Certiorari*.[20]

In the now-questioned *Decision*,[21] the CA reversed the NLRC and characterized petitioner as a project employee. It found that the labor tribunals committed an error in giving more weight to the duration stated in the "whereas clause" of the Project Employment Contract, which merely provided the target completion date of the project, instead of the stipulation under the first paragraph thereof. The CA was also convinced, based on its assessment of the evidence presented, that Amaia Series Project's June 30, 2016 completion date was not achieved and that petitioner's engagement was confined to such project, to wit:

> Firstly, Galan's payslips prove that his salary was paid even after 30 June 2016 and that his position was still as a painter in the project Amaia Series Novaliches. The format of the payslip indicates:
>
> "Name: Project:
> GALAN, JOHN CARLO F. AMAIA SERIES NOVALICHES
> Emp. ID: 4007617 Period: JUN 27-JUL 3, 2016
> Position: PAINTER Pay Type: BPI-9909145195
>
> x x x x"
>
> The period of payment went on from 27 June 2016 until 04 September 2016 showing the same position, project, employee ID, and pay type, which indicates that the project did not end on 30 June 2016.
>
> Secondly, the AMCOOP tried to notify Galan regarding the completion of the project through a Notice of Project Phase Completion which states:
>
> x x x x
>
> The said Notice was likewise signed by the following: Maricar Hambala as AMCOOP Time Keeper; Carl Lilatag as Field Checker of MDC-BP; Felipe Umali and Benjie Guiao as Field Checkers of MDC- BP, with a note stating that Galan refused to sign which Galan even admitted in his Position Paper. It is evident, therefore, that even the representatives of MDC Build Plus signed the Notice effectively proving that the contract for Amaia Series Project exceeded the 30 June 2016 date provided in the Project Employment Contract since the Notice was dated 29 August 2016 with an effectivity date of 03 September 2016.
>
> Finally, the Termination Report submitted by AMCOOP to the DOLE dated 07 December 2016 stated that 38 project employees were

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[18] Id. at 93-95, Motion for Reconsideration dated October 5, 2017.
[19] Id. at 97-98, NLRC Resolution dated October 30, 2017.
[20] Id. at 54-62, Petition for Certiorari dated January 22, 2018.
[21] Id. at 39-48, CA Decision dated March 12, 2020.

> dismissed from 30 August 2016 to 26 November 2016 due to Project Phase Completion, and specifically with respect to Galan, he was laid off on 03 September 2016.[22]

Corollary to the foregoing discussion, the grant of the money claims was deemed improper as petitioner was validly dismissed from service in view of the project's completion.[23]

The decretal portion of the *Decision* reads:

> **WHEREFORE**, the aforegoing considered, the present Petition for *Certiorari* is hereby **GRANTED**. The Decision dated 19 September 2017 and Resolution dated 20 October 2017 issued by the National Labor Relations Commission in NLRC LAC No. 06-002036-17 are **REVERSED** and **SET ASIDE**.
>
> Accordingly, [petitioner] John Carlo F. Galan is **NOT** entitled to Backwages, Separation Pay, 13th Month Pay, and Attorney's Fees for validly being dismissed due to the completion of the project to which he was assigned.
>
> **SO ORDERED**.[24]

With his Motion for Reconsideration[25] having been denied by the CA through the challenged *Resolution*,[26] petitioner now comes to this Court through the present Petition.[27]

Simply put, the issue for the Court's resolution is whether or not the CA erred in reversing the ruling of the labor tribunals.

THE COURT'S RULING

Ploughing through the divergent postures of the parties, the Court finds no compelling reason to reverse the oppugned CA rulings.

As a general rule, factual questions lie beyond the scope of the Court's review in a Rule 45 petition for review on *certiorari*.[28] Since it is not a trier of facts, the Court is rarely inclined to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary.[29] Nevertheless, in the exercise of its equity jurisdiction, the Court may engage in such exercise where there is a conflict between the factual findings of the LA and NLRC, on one hand, and those of the CA, on the other.[30]

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22 Id. at 45-46.
23 Id. at 47.
24 Id.
25 Id. at 241-253, Motion for Reconsideration dated June 18, 2020.
26 Id. at 50-52, CA Resolution dated November 25, 2020.
27 Id. at 12-38, Petition for Review on *Certiorari* dated January 27, 2021.
28 See *Carpio v. Modair Manila Co. Ltd., Inc.*, G.R. No. 239622, June 21, 2021.
29 See *JR Hauling Services vs. Solamo*, G.R. No. 214294, September 30, 2020.
30 See *Carpio v. Modair Manila Co. Ltd., Inc.*, supra note 28.

Such is the situation obtaining in the case at bench. Verily, the labor tribunals and the CA differed in their assessment of the evidence relating to the completion date of the Amaia Series Project and the supposed extension of petitioner's engagement as a painter therein. The resolution of the labor dispute thus involves a question of fact as it calls for a review of the evidence presented.[31] Upon the foregoing premises, the Court shall take cognizance of and resolve the factual issues involved in this case.

Article 295 of the Labor Code[32] distinguishes a "project employee" from a "regular employee," *viz.*:

> 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.

There is regular employment when the employee is: (*a*) engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; or (*b*) a casual employee whose activities are not usually necessary or desirable in the employer's usual business or trade, and has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.[33]

On the other hand, project employment exists when an employee is hired under a contract which specifies that the employment will last only for a specific project or undertaking the completion or termination of which is determined at the time of his engagement.[34] The employer has the burden of proving the existence of a project employment by showing that: (*1*) the employee was assigned to carry out a specific project or undertaking; and (*2*) the duration and scope of which were specified at the time the employee was engaged for such project.[35] Moreover, the employer must also prove that there was indeed a project undertaken.[36] "Failing these, the worker will be presumed a regular employee."[37]

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31 See *Caranto v. Caranto*, G.R. No. 202889, March 2, 2020.
32 Presidential Decree No. 442 of 1974, as Amended and Renumbered, enacted on May 1, 1974.
33 See *Freyssinet Filipinas Corporation. v. Lapuz*, 849 Phil. 684, 695 (2019).
34 See id.
35 See id.
36 See *Carpio vs. Modair Manila Co. Ltd., Inc.*, supra note 28 at 8.
37 Id.

When the labor dispute involves workers in the construction industry, the resolution of the controversy is also governed by DOLE Department Order No. 19-93, Series of 1993[38] (D.O. 19-93), entitled "Guidelines Governing the Employment of Workers in the Construction Industry." Section 2.1 thereof explicitly provides that it covers project employees, which it defines as "those employed in connection with a particular construction project or phase thereof and whose employment is co-terminus with each project or phase of the project to which they are assigned." Section 2.2, on the other hand, enumerates the following indicators of project employment, "which, while phrased in permissive language, must [nevertheless] be read in relation to Article 295:"[39]

> Indicators of project employment. — Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.
>
> (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
>
> (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
>
> (c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.
>
> (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.
>
> (e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/ suspensions.
>
> (f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.[40]

Tying together the foregoing concepts with prevailing case law on the matter, the Court, in the recent case of *Carpio v. Modair Manila Co. Ltd., Inc.*,[41] formulated the following guiding principles intending "to obviate further confusion regarding the nature of employment for workers in the construction industry:"

> *First*, a worker is presumed a regular employee, unless the employer establishes that (1) the employee was hired under a contract specifying that the employment will last only for a specific undertaking, the termination of

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38 Dated April 1, 1993.
39 See *Carpio vs. Modair Manila Co. Ltd., Inc.*, supra note 28 at 8.
40 Id. at 8-9.
41 Id.

> which is determined at the time of engagement; (2) there was indeed a project undertaken; and (3) the parties bargained on equal terms, with no vices of consent.
>
> *Second*, if considered a regular employee at the outset, security of tenure already attaches, and the subsequent execution of project employment contracts cannot undermine such security, but will simply be considered a continuation in the regular engagement of such employee.
>
> *Third*, even if initially engaged as a project employee, such nature of employment may ripen into regular status if (1) there is a continuous rehiring of project employees even after cessation of a project; and (2) the tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer. Conversely, project-based employment will not ripen into regularity if the construction worker was truly engaged as a project-based employee, and between each successive project, the employer made no manifestations of any intent to treat the worker as a continuing resource for the main business.
>
> *Fourth*, regularized construction workers are subject to the "no work, no pay" principle, such that the employer is not obligated to pay them a salary when "on leave." In case of an oversupply of regularized construction workers, then the employer can exercise management prerogative to decide whom to engage for the limited projects and whom to consider as still "on leave."
>
> *Finally*, submission of termination reports to the DOLE Field Office "may be considered" only as an indicator of project employment; conversely, non-submission does not automatically grant regular status. By themselves, such circumstances do not determine the nature of employment.[42]

Applying these principles in the instant case, the Court holds that the CA correctly classified petitioner as a project employee.

As culled from the records, it is uncontroverted that there was a project undertaken herein, as the parties mutually recognize that petitioner was assigned as a painter in Amaia Series Project.[43] It is also crystal clear that there is dearth of any allegation, much less proof, that petitioner did not knowingly and voluntarily enter into his employment contract, or that the execution of the same was attended by force, duress, improper pressure or any other circumstance which vitiates his consent.[44] The first and third components of the first principle are thus palpably present.

Petitioner's primary argument in support of his postulation that he was a regular employee rests on the ostensible indefiniteness of his contract duration.[45] Particularly, he accentuates the fact that he continued working beyond June 30, 2016, which was supposedly his last day of work. Petitioner

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[42] Id. at 20-21.
[43] *Rollo*, p. 40, CA Decision dated March 12, 2020.
[44] See *Herma Shipyard, Inc. v. Oliveros*, 808 Phil. 668, 680 (2017).
[45] *Rollo*, p. 22, Petition for Review on *Certiorari* dated January 27, 2021.

bewails that allowing the extension of his employment "would create a window of opportunity for the employers to just claim that the project completion has been extended so that they can evade obligations that will arise from their employee's acquisition of regular status."[46]

Petitioner's polemics fail to impress.

As the CA astutely observed, petitioner's elucidation on the nature of his employment is fundamentally flawed. This is mainly because it rests on the unsubstantiated premise that his services should have been already terminated on June 30, 2016. On this score, the Court gives its imprimatur to the CA's ratiocination that the whereas clause of the Project Employment Contract merely provided the target completion date of the Amaia Series Project. More importantly, it is a well-ensconced rule that recitals in a contract or other written instrument are mere introductory and preparatory statements and are not an essential part of the operating portions of the contract.[47] "They may be used as a guide in interpreting ambiguous portions of the operative part, but cannot supersede the latter."[48]

Accordingly, what is controlling in this case is the contractual stipulation pertaining to the duration of petitioner's work as a painter, which explicitly provided that petitioner was deployed as a painter from September 18, 2015 *until project phase completion*, to wit:

> POSITION AND JOB DESCRIPTION: the [respondent] deploys the PROJECT EMPLOYEE to the position of PAINTER at the AMAIA SERIES phase of the said project to start on Sept. 18, 2015 until project phase completion for which his/her services is engaged. x x x.[49]

Significantly, a survey of relevant jurisprudence leads to the conclusion that such phrasing constitutes an undertaking that is specific and determinable. In *Herma Shipyard, Inc. v. Oliveros*,[50] the Court held that a provision[51] expressly stating that the employment shall end upon the arrival of the target completion date *or upon the completion of such project* was sufficient to adequately inform the employees therein of their employment status as project-based employees at the time they signed their employment contract. By the same token, the Court, in *Dacles v. Millennium Erectors*

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46 Id.

47 See *Bawasanta v. People*, G.R. Nos. 219300, 219323 & 219343, November 17, 2021.

48 Id.

49 *Rollo*, pp. at 68-69, LA Decision dated February 28, 2017, and 133, Petitioner's Project Employment Contract.

50 *Supra* note 44.

51 The pertinent portion of the stipulation reads:

> Ang KUMPANYA ay pumapayag na bayaran ang serbisyo ng PANG-PROYEKTONG KAWANI bilang isang Ship Fitter Class A sa nasabing proyekto simula 4/1/2009 hanggang 4/30/2009 o sa sandaling matapos ang nasabing gawain o anumang bahagi nito kung saan siya ay inupahan o kung saan ang kanyang serbisyo ay kailangan at ang PANG-PROYEKTONG KAWANI ay sumasang-ayon. Ang mga gawaing nabanggit sa kasunduang ito ay hindi pangkaraniwang ginagawa ng KUMPANYA kundi para lamang sa itinakdang panahon o hanggang matapos ang nasabing proyekto[.] (Underscoring supplied.)

Corporation,[52] regarded the contractual provision that the employment would start at a certain date "and will end on completion/phase of work of project" to have "sufficiently apprised petitioner that his security of tenure with [the company] would only last as long as the specific project or a phase thereof to which he was assigned was subsisting."

Appositely, the Court gives full accord to the verdict of the CA. As opposed to the bare suppositions of the labor tribunals, the CA, as above adumbrated, predicated its conclusions upon a perspicacious evaluation of documentary evidence.[53] In sooth, it was proven that the Amaia Series Project actually "went beyond the June 30, 2016 target date."[54]

Petitioner finally takes exception to respondent's belated submission of the termination report with the DOLE Regional Office, which came after both his separation from work in September 2016 and his filing of the complaint in October 2016. According to petitioner, this evinces bad faith on the part of the respondent, as the attempt to comply with D.O. 19-93 was a mere afterthought. Thusly, such action "should not be considered insofar as the determination of validity of termination is concerned." [55]

Petitioner is clutching at straws.

As earlier intimated, *Carpio v. Modair Manila Co. Ltd., Inc.*[56] formulated the guiding principles in determining nature of employment for workers in the construction industry. Ineluctably, the final principle directly addresses this particular claim as it teaches that non-submission of termination report to the DOLE Field Office **does not** automatically grant regular status to the affected employee. At most, it is but one of the considerations in the determination of the nature of employment of workers in the construction industry.[57] After an assiduous examination of the records and a careful consideration of all the factors, the Court rules and so holds that the totality of the evidence submitted establishes petitioner's status as a project employee. Hence, upon the completion of the Amaia Series Project, he was validly terminated from employment.[58] *Carpio v. Modair Manila Co. Ltd., Inc.*[59] is again instructive:

> As regards security of tenure, regular employment may be terminated for just or authorized causes; whereas, for project employment, lawful dismissal is brought about by the completion of the project or contract for which the employee was engaged, unless terminated during the life of the project, in which case, only just or authorized causes may be invoked. (Underscoring supplied.)

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52 763 Phil. 550 (2015).
53 *Rollo*, p. 45, CA Decision dated March 12, 2020.
54 Id.
55 Id. at 23-24, Petition for Review on *Certiorari* dated January 27, 2021.
56 Supra note 28.
57 See *Toyo Seat Philippines Corp. v. Velasco*, G.R. No. 240774, March 3, 2021.
58 See *Dacles v. Millennium Erectors Corp.*, supra note 52.
59 Supra note 28.

Concomitant to the validity of petitioner's termination from service, the CA also correctly held that he was not entitled to backwages, separation pay, proportionate 13th month pay, and attorney's fees.[60]

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated March 12, 2020 and the Resolution dated November 25, 2020 of the Court of Appeals in CA-G.R. SP No. 154230 are hereby **AFFIRMED**.

SO ORDERED."

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
7/26/23

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60 See *Colegio San Agustin-Bacolod v. Montaño*, G.R. No. 212333, March 28, 2022.