



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Baguio City

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated April 17, 2023 which reads as follows:*

**“G.R. No. 246601 (Cesario<sup>1</sup> R. Darang, Petitioner v. Torm Shipping Philippines, Inc., Respondent.)** — Assailed in this Petition for Review on *Certiorari*<sup>2</sup> under Rule 45 of the Rules of Court are the Decision<sup>3</sup> dated December 11, 2018 and the Resolution<sup>4</sup> dated April 12, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 154562, which reversed the Decision<sup>5</sup> dated August 1, 2017 of the National Conciliation and Mediation Board (NCMB) in MVA-100-RCMB-NCR-226-07-10-2016. The CA found that the NCMB erred in finding petitioner Cesario R. Darang (Darang) to be permanently and totally disabled and awarding him \$60,000.00 as disability benefits and attorney’s fees at 10% of the total monetary award.

**The Facts**

Since 2005, Darang has been employed with respondent Torm Shipping Philippines, Inc. (Torm Shipping). In August 2015, he was assessed as fit for sea duty during his Pre-Employment Medical Examination prior to his deployment. A month later, he signed an eight (8)-month contract to be employed as GP1/Motorman for Torm Shipping’s principal, Torm Singapore Pvt. Ltd.<sup>6</sup>

According to Darang, his duties aboard the vessel include maintaining and cleaning the ship’s various engine parts, lifting heavy equipment, and the like. His work involves spending eight (8) hours in the ship’s engine room, where temperatures reach around 40°C.<sup>7</sup>

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<sup>1</sup> “Cesar” in some parts of the *rollo*.

<sup>2</sup> *Rollo*, pp. 12–51.

<sup>3</sup> *Id.* at 81–94. Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mario V. Lopez (now a Member of this Court) and Ronaldo Roberto B. Martin.

<sup>4</sup> *Id.* at 57–59.

<sup>5</sup> *Id.* at 252–268. Concurred in by Marine Voluntary Arbitrators (MVA) Edgar P. Fernando and Gregorio C. Biales, Jr., with MVA Gregorio B. Sialsa (MVA Sialsa) dissenting; *id.* at 269–286.

<sup>6</sup> *Id.* at 17.

<sup>7</sup> *Id.* at 18.

*file*

Darang claimed that on January 15, 2016, while performing his duties, he suddenly felt dizzy and collapsed, hitting his left elbow and upper back as he fell on the floor. Though he was given first aid, he still felt the dizziness and numbness on his arms, as well as pain on his shoulders, arms, elbow, and upper back. On January 22, 2016, he was sent to a hospital in Egypt, where he informed the doctor of his symptoms. But the doctor only checked his blood pressure, then declared him unfit for work and recommended his medical repatriation.<sup>8</sup>

Darang was medically repatriated on January 24, 2016 and reported at Torm Shipping on January 26, 2016. Torm Shipping referred him to its company-designated physician, NGC Clinic, where he relayed his symptoms, including his accident onboard. NGC Clinic, through its physician Dr. Nicomedes Cruz (Dr. Cruz), sent him to Medical City Manila, then to Manila Doctors Hospital for treadmill stress and 2-D echo tests. The tests revealed that Darang was suffering from *concentric left ventricular hypertrophy*. Then, he was sent to the Philippine General Hospital (PGH) where, upon examination by Dr. Cirilo Tacata, Darang was found to have *bilateral C7 radiculopathy with acute and chronic denervation changes; and bilateral median neuropathy at the level of the hand (Carpal Tunnel Syndrome), moderate in degree*. After that, he underwent physical therapy, which lasted until June 21, 2016, with no positive improvement.<sup>9</sup>

On his last day of therapy, June 21, 2016, Darang alleged that the company-designated physician, Dr. Reynaldo Rey-Matias issued a Medical Report,<sup>10</sup> recommending to continue his rehabilitation. According to Darang, on that same day, Torm Shipping informed him that they would stop the medical assistance and verbally told him that his medical condition is not work-related. Despite repeated demands from Darang, Torm Shipping issued no medical assessment.<sup>11</sup>

Because he continued to experience pain, Darang decided to seek the opinion of Dr. Manuel Fidel M. Magtira (Dr. Magtira), who issued a Medical Report,<sup>12</sup> finding him to be suffering from *carpal tunnel syndrome*. Dr. Magtira found him unfit for further sea duties in view of his permanent partial disability.<sup>13</sup>

For his high blood pressure, Darang sought Dr. May S. Donato-Tan (Dr. Donato-Tan), who, after examination and tests, found him to be suffering

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<sup>8</sup> Id. at 18–19.

<sup>9</sup> Id. at 19–20.

<sup>10</sup> Id. at 379.

<sup>11</sup> Id. at 20.

<sup>12</sup> Id. at 380–381.

<sup>13</sup> Id.

from *hypertensive arteriosclerotic cardiovascular disease (HACVD), stage 2 hypertension (HPN) erratic and persistently elevated*. Accordingly, Dr. Donato-Tan, too, found him to be unfit for further sea duties in view of his permanent disability.<sup>14</sup>

Darang then sent a Letter<sup>15</sup> to Torm Shipping, requesting a meeting to discuss payment of his disability benefits. When Torm Shipping did not reply, he filed a Notice to Arbitrate<sup>16</sup> before the Regional Conciliation and Mediation Board- National Capital Region (RCMB-NCR). Before the RCMB-NCR, the parties agreed to voluntary arbitration;<sup>17</sup> however, when the parties failed to settle, they submitted their respective pleadings.<sup>18</sup>

In reply to Darang's claims, Torm Shipping asserted that on January 15, 2016, Darang experienced dizziness and shortness of breath. The onboard check-up revealed that his blood pressure was elevated at 160/100 mmHg; his blood pressure at the check-up in Suez, Egypt was at 180/100 mmHg. There was also no record in the log kept by the vessel's Master that Darang suffered any injury or that he collapsed.<sup>19</sup>

Upon repatriation, Darang reportedly manifested his elbow pain. Subsequently, he was diagnosed with *carpal tunnel syndrome* and *lateral epicondylitis, or "tennis elbow"*.<sup>20</sup> Although he was advised to undergo a carpal tunnel release surgery, Darang opted to avail of physical therapy instead. On June 7, 2016, the company-designated physician issued a Medical Report,<sup>21</sup> addressed to a Ms. Chairene A. Operio, a claims executive of the Personal Injury Division of Pandiman, Philippines, Inc. The report stated that Darang's hypertension is not work-related and is considered *primary (essential) hypertension*, which develops gradually over many years. On Darang's *carpal tunnel syndrome* and *tennis elbow*, the physician opined that they are incidental findings and that Darang acquired them *after his repatriation*.<sup>22</sup>

Torm Shipping insisted that Darang's disability is not work-related. Further, it faulted Darang for not contesting the company-designated physician's findings. It claimed that the records are bereft of any report from a physician that Darang consulted. Finally, it argued that Darang failed to comply with the mandatory requirement under the Philippine Overseas

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<sup>14</sup> Id. at 382–384.

<sup>15</sup> Id. at 385–388.

<sup>16</sup> Id. at 497.

<sup>17</sup> Id. at 496.

<sup>18</sup> Id. at 22.

<sup>19</sup> Id. at 397; 412–413.

<sup>20</sup> See *Lateral Epicondylitis (Tennis Elbow)*, Johns Hopkins Medicine, at <<https://www.hopkinsmedicine.org/health/conditions-and-diseases/lateral-epicondylitis-tennis-elbow>> (last accessed February 1, 2023).

<sup>21</sup> *Rollo*, pp. 450–451.

<sup>22</sup> Id.

Employment Administration-Standard Employment Contract (POEA-SEC) that the case be referred to a third physician in case of conflict between the findings of the company-designated physician and the seafarer-appointed physician.<sup>23</sup>

### **The NCMB Ruling**

In a Decision<sup>24</sup> dated August 1, 2017, the NCMB ruled that Darang is totally and permanently disabled. Accordingly, it ordered Torm Shipping to pay him \$60,000.00 and 10% of the total award as attorney's fees.

The NCMB found that the company-designated physician failed to issue a final medical report within 120 or 240 days from the onset of the disability. Consequently, Darang's illness and injury became total and permanent. The NCMB held that the Dr. Cruz's medical report of June 7, 2016 cannot be considered a final medical assessment because it did not certify whether Darang was fit to work or not. Finally, the NCMB also found Darang's injury and illness to be work-related.<sup>25</sup>

The NCMB denied Torm Shipping's motion for reconsideration<sup>26</sup> in a Resolution<sup>27</sup> dated January 11, 2018. Aggrieved, Torm Shipping filed a petition for review<sup>28</sup> under Rule 43 of the Rules of Court before the CA.

### **The CA Ruling**

In its Decision<sup>29</sup> dated December 11, 2018, the CA reversed and set aside the NCMB ruling, and accordingly, dismissed Darang's claim for disability benefits.

In so ruling, the CA faulted the NCMB for not sustaining the findings of the company-designated physician on the non-work-relatedness of Darang's illness or injury. The appellate court held that Darang failed to observe the mandatory procedure of referring the matter to a third doctor in case of conflicting findings, in violation of the POEA-SEC. It also held that while *primary (essential) hypertension, carpal tunnel syndrome, and tennis elbow* are disputably presumed to be work-related since they are not listed in

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<sup>23</sup> Id. at 399-415.

<sup>24</sup> Id. at 252-268.

<sup>25</sup> Id. at 260-267.

<sup>26</sup> Id. at 234-251.

<sup>27</sup> Id. at 232-233.

<sup>28</sup> Id. at 194-229.

<sup>29</sup> Id. at 81-94.

Section 32-A of the POEA-SEC, Darang nevertheless failed to present a reasonable connection between his work aboard the vessel and his illnesses.<sup>30</sup>

Petitioner sought reconsideration,<sup>31</sup> which the CA denied in a Resolution<sup>32</sup> dated April 12, 2019. Hence this petition for review on *certiorari*.

### The Issue Before the Court

The issue before the Court is whether the CA erred in reversing the NCMB ruling and finding that Darang is not entitled to any disability benefits.

In the instant petition, Darang argues that the CA manifestly overlooked certain relevant facts not disputed by the parties and that its decision is based on a misapprehension of facts. Thus, the Court may entertain questions of fact. Specifically, he argues that: (1) his *hypertension, carpal tunnel syndrome, and tennis elbow* are all work-related by virtue of the strenuous nature of his duties, stressful work environment, and the burden of being away from his loved ones; (2) the duty to refer the matter to a third doctor did not arise because Torm Shipping failed to issue a final and definite medical assessment; and (3) the CA erred in not observing the rule laid down in *Ilustricimo v. NYK-Fil Shipmanagement, Inc.*,<sup>33</sup> specifically, that the seafarer's duty is to inform the company of a contrary medical finding by his doctor and it falls to the employer whether to insist on the finding of its physician, or, upon disagreement of the seafarer, refer the matter to a third doctor.<sup>34</sup>

In its Comment<sup>35</sup> filed on September 9, 2019, Torm Shipping maintains that the CA correctly reversed the NCMB ruling and insists that Darang's disability is not work-related. It also faulted Darang for failing to follow the mandatory requirement of referral to a third doctor.

Darang filed a Motion for Leave<sup>36</sup> to admit his Reply<sup>37</sup> on December 4, 2019, where he insisted that his condition was work-related and that it was Torm Shipping's duty to refer the matter to a third doctor.

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<sup>30</sup> Id. at 88–93.

<sup>31</sup> Id. at 60–76.

<sup>32</sup> Id. at 57–59. Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mario V. Lopez (now a Member of this Court) and Ronaldo Roberto B. Martin.

<sup>33</sup> 834 Phil. 693 (2018) [Per J. Velasco, Jr., Third Division].

<sup>34</sup> *Rollo*, pp. 15–16.

<sup>35</sup> Id. at 499–518.

<sup>36</sup> Id. at 523–526.

<sup>37</sup> Id. at 527–547.

### The Court's Ruling

The petition is meritorious.

The Court emphasizes at the outset that the issue of whether Darang's illness is compensable is primarily a question of fact. Generally, only questions of law are permitted in petitions for review on *certiorari* filed under Rule 45 of the Rules of Court. Nevertheless, the rule admits exceptions, such as when, among other established grounds, the rulings of the tribunals below are conflicting, or when the decision of the CA is based on a misapprehension of the facts.<sup>38</sup> Here, the CA and the NCMB reached diverging conclusions in their decisions; as such, the Court deems it appropriate to conduct its own assessment of the factual issues in this case.

After a circumspect review of the records, the Court finds that the CA erred in reversing the NCMB ruling. As will be explained hereunder, the NCMB correctly found that Darang is deemed suffering from a permanent and total disability; and hence, entitled to its commensurate benefits.

In disability claims by seafarers, the Court's ruling in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr. (Elburg)*<sup>39</sup> has become, in subsequent cases, a touchstone by which compliance by the employer and the seafarer is determined. There, the Court, speaking through Associate Justice Jose C. Mendoza, laid down the following guidelines:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

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<sup>38</sup> *Benhur Shipping Corporation, et al. v. Riego*, G.R. No. 229179, March 29, 2022 [Per C.J. Gesmundo, First Division], citing *Gamboa v. Maunlad Trans., Inc.*, 839 Phil. 153, 166 (2018) [Per J. Perlas-Bernabe, Second Division], and *Esquivel v. Atty. Reyes*, 457 Phil. 509, 516-517 (2003) [Per J. Panganiban, Third Division].

<sup>39</sup> 765 Phil. 341 (2015) [Per J. Mendoza, Second Division].

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.<sup>40</sup>

The Court finds that Torm Shipping totally disregarded the requirement of issuing a final medical assessment within the periods allowed by law. In fact, the Court finds that no assessment was issued to Darang at all.

*First*, the Medical Report<sup>41</sup> issued on June 7, 2016 by Dr. Cruz was issued beyond the 120-day period, dated 133 days since Darang reported at Torm Shipping on January 26, 2016. While the law allows an extension of the period to 240 days, Torm Shipping failed to discharge its burden to prove that its company-designated physician had a sufficient justification to extend such period.

*Second*, by no stretch of the imagination can the June 7, 2016 medical report be considered a compliant final medical assessment under the guidelines in *Elburg*. In *Jebsens Maritime, Inc. v. Mirasol*,<sup>42</sup> the Court, through Associate Justice Alfredo Benjamin S. Caguioa, defined what constitutes a final medical assessment:

A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.<sup>43</sup> (Underscoring supplied)

The Court reproduces the salient contents of the two-page June 7, 2016 medical report as follows:

[First Page]  
Date : June 07, 2016  
Attention : Ms. Chairene A. Operio  
Claims Executive – Personal Injury  
Division  
Pandiman Philippines, Inc.  
Patient : Cesario R. Darang  
Name of Vessel : Torm Thor  
Date of Repatriation: January 24, 2016  
  
Diagnosis: Hypertension, newly diagnosed  
Carpal Tunnel Syndrome, Bilateral

<sup>40</sup> *Rollo*, pp. 68–69.  
<sup>41</sup> *Id.* at 450–451.  
<sup>42</sup> G.R. No. 213874, June 19, 2019 [Per J. Caguioa, Second Division].  
<sup>43</sup> *Id.*

*file*

April 17, 2023

## Lateral Epicondylitis, Left Elbow

This is in response to your inquiry regarding the above patient:

His hypertension is considered not work-related. The patient has primary (essential) hypertension - For most adults, there's no identifiable cause of high blood pressure, called primary (essential) hypertension, tends to develop gradually over many years.

Signed  
Nicomedes G. Cruz, MD<sup>44</sup>

[Second Page]

Date : June 07, 2016  
Attention : Ms. Chairene A. Operio  
Claims Executive – Personal Injury  
Division  
Pandiman Philippines, Inc.  
Patient : Cesario R. Darang  
Name of Vessel : Torm Thor  
Date of Repatriation: January 24, 2016

Diagnosis: Hypertension, newly diagnosed  
Carpal Tunnel Syndrome, Bilateral  
Lateral Epicondylitis. Left Elbow

This is in response to your inquiry regarding the above patient:

1. The conditions – carpal tunnel syndrome and lateral epicondylitis are incidental findings. He developed these conditions after his repatriation.
2. The carpal tunnel syndrome and lateral epicondylitis are not related to his hypertension.
3. The overall prognosis is fair. His hypertension is labile and has (*sic*) difficult to control with medications. Furthermore, he still complains of pain on both arms.
4. He has not reached maximum medical improvement with regards (*sic*) to his hypertension. Up to present his BP is labile inspite (*sic*) of medications. I am recommending extending treatment for his hypertension for one more month then evaluate him.

Signed  
Nicomedes G. Cruz, MD<sup>45</sup>

Clear in this report is the fact that, far from being final, the assessment recognized that Darang was still complaining of pain on his arms and his blood pressure was still unstable. In fact, Dr. Cruz still recommended further treatment for one more month; after which, Darang's condition must be re-evaluated.

<sup>44</sup> *Rollo*, p. 450.

<sup>45</sup> Underscoring supplied, *id.* at 451.

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Darang also alleged that on June 21, 2016, the last day of his physical therapy, another company-designated physician, Dr. Reynaldo Rey-Matias, issued a medical report.<sup>46</sup> The handwritten report, filling out a template form, states (the handwritten portions are underlined):

Date: 6-21-16

To: Dr. Cruz

Referring back Darang Cesario,     years old, diagnosed with Lateral Epicondylitis / CTS (L)

Findings: Cervical spondylosis

Pain on (R) shoulder 5/0 [illegible writing]

(-) Left elbow pain

[Illegible writing]

Remarks: cont. rehab

Signed  
Reynaldo Rey-Matias, MD, MSHMS

This medical report, remarkably, also recognized that far from being resolved, Darang's condition was still persisting. In fact, Dr. Rey-Matias recommended the continuation of Darang's rehabilitation. No determination of work relation or fitness for work was also indicated. Once again, this is not a final medical assessment within the contemplation of the *Elburg* guidelines.

*Finally*, Torm Shipping unjustifiably refused to give Darang a copy of the June 7, 2016 assessment, which it relies on to claim that Darang's disability is not work-related. This is clear from his uncontested allegation that, despite his demands, Torm Shipping did not provide him with a copy of the final medical assessment.<sup>47</sup> Instead, Darang alleged that he was only verbally informed on June 21, 2016, that his physical therapy would be discontinued because his condition is not work-related. In fact, both medical assessments are not even addressed to Darang. The June 7, 2016 medical report of Dr. Cruz was addressed to a Chairene A. Operio, a claims executive at Pandiman, Philippines, Inc. The June 21, 2016 medical report is addressed to Dr. Cruz. For the purpose of complying with the guidelines, these are unacceptable.

In *Gere v. Anglo-Eastern Crew Management Phils., Inc.*,<sup>48</sup> the Court, through Associate Justice Andres B. Reyes, Jr., stated:

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<sup>46</sup> Id. at 379.

<sup>47</sup> Id. at 290-291; Darang's *Position Paper*.

<sup>48</sup> 830 Phil. 695 (2018) [Per J. Reyes, Jr., Second Division].

In following the [Elburg guidelines], it must be emphasized that the company-designated physician must not only "issue" a final medical assessment of the seafarer's medical condition. He must also — and the Court cannot emphasize this enough — "give" his assessment to the seafarer concerned. That is to say that the seafarer must be fully and properly informed of his medical condition. The results of his/her medical examinations, the treatments extended to him/her, the diagnosis and prognosis, if needed, and, of course, his/her disability grading must be fully explained to him/her by no less than the company-designated physician.

**In this regard, the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to him/her by any other means sanctioned by present rules.** For indeed, proper notice is one of the cornerstones of due process, and the seafarer must be accorded the same especially so in cases where his/her well-being is at stake.

A company-designated physician who fails to "give" an assessment as herein interpreted and defined fails to abide by due process, and consequently, fails to abide by the foregoing guidelines. (Emphasis and underscoring in the original)

Nowhere in the records does Torm Shipping dispute the fact that it issued no final medical assessment to Darang. Thus, his allegation went uncontested and should have been taken into consideration by the CA. Without a final medical assessment, Torm Shipping's compliance with the guidelines laid down in *Elburg* falls. Consequently, Darang's disability has become permanent and total by operation of law.

In view of this egregious lapse, the Court no longer sees it fit to discuss whether Darang's disability should have been referred to a third doctor. Otherwise stated, the company-designated physician is required to issue a **final and definite assessment** of the seafarer's disability rating within the aforesaid 120/240-day period; otherwise, the opinions of the company-designated and the independent physicians — and even the third doctor, for that matter — are **rendered irrelevant** because the seafarer is already **conclusively presumed** to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto.<sup>49</sup>

In the first place, there was no assessment issued by the company-designated physician with which the seafarer-appointed physician might disagree. Therefore, the circumstances giving rise to referral to a third doctor did not occur.

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<sup>49</sup> *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019 [Per J. Perlas-Bernabe, Second Division]; citations omitted.

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Accordingly, the monetary award of US \$60,000.00 in the NCMB decision must be upheld. In *Benhur Shipping Corporation, et al. v. Riego*,<sup>50</sup> the Court, through Chief Justice Alexander G. Gesmundo, held that obligations to pay in foreign currency may be discharged in Philippine currency at the prevailing rate of exchange at the time of payment.<sup>51</sup> As well, the award of attorney's fees must also be reinstated because Darang was compelled to litigate and incur expenses in order to protect his interest.<sup>52</sup> Finally, pursuant to prevailing jurisprudence,<sup>53</sup> legal interest of 6% *per annum* shall be imposed on the awards from the date of finality of this Resolution until fully paid.

**FOR THESE REASONS**, the petition is **GRANTED**. The Decision dated December 11, 2018 and the Resolution dated April 12, 2019 of the Court of Appeals in CA-G.R. SP No. 154562 are hereby **REVERSED** and **SET ASIDE**. Respondent Torm Shipping Philippines, Inc. is hereby **ORDERED** to **PAY** petitioner Cesario R. Darang total and permanent disability benefits in the amount of US\$60,000.00 at the prevailing rate of exchange at the time of payment, as well as attorney's fees equivalent to ten percent (10%) of the total monetary award. Finally, all monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Resolution until full payment.

**SO ORDERED.**" (Lopez, M., *J.*, no part due to prior action in the Court of Appeals; Caguioa, *J.* designated additional member per Raffle dated May 6, 2021).

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court *ff 1/10*

10 JAN 2024

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<sup>50</sup> Supra note 38.

<sup>51</sup> Id., citing *C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, 431 Phil. 11, 20 (2002).

<sup>52</sup> CIVIL CODE, art. 2208 (2).

<sup>53</sup> See *Lara's Gifts v. Midtown*, G.R. No. 225435, August 28, 2019 [Per J. Carpio, *En Banc*].

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