REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

7107 ISLANDS SHIPPING CORPORATION, Petitioner, - versus - **SECRETARY OF FINANCE,** Respondent.	**CTA CASE NO. 7955** Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.* **Promulgated:** MAR 06 2012 3:15 p.m.

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On September 4, 2007, the M/V Coco Explorer 2 (hereafter referred to as the "Vessel") owned by C&C Marine A/S and flying a Panamanian flag arrived at the Port of Batangas.[1]

On September 24, 2007, C&C Marine A/S and Mr. Esteban Tajanlangit, as representative of the buyer, 7107 Islands Shipping Corporation (petitioner), a corporation still to be formed, entered into a Memorandum of Agreement for the sale of the Vessel.[2]

On November 15, 2007, a Bill of Sale was executed where C&C Marine A/S, as the transferor, conveyed its 100% shares in the Vessel to petitioner, as the transferee.[3]

On November 27, 2007, the Vessel secured a "Clearance of Vessel to a Foreign Port" from Port of Batangas to sail to Mariveles, Bataan for repairs.[4] Then, it was brought to the Port of Manila allegedly for further repairs and upgrading.

On January 21, 2008, a "Subpoena Duces Tecum/Ad Testificandum" was purportedly issued by the Chief of *Run After the Smugglers* (RATS) Group of the Bureau of Customs (BOC).[5]

On March 4, 2008, the District Collector of the Port of Manila issued a Warrant of Seizure and Detention (WSD) for the Vessel. After the seizure and forfeiture proceedings, the District Collector resolved to lift the WSD and

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Statement of the Issue (JSFSI), *rollo,* p. 1077.
[2] Par. 2, Stipulation of Facts, JSFSI, *rollo,* p. 1077; Exhibits "I" and "2".
[3] Exhibit "K".
[4] Par. 3, Stipulation of Facts, JSFSI, *rollo,* p. 1077; Exhibits "E" and "1".
[5] Exhibit "A".

ordered the release of the Vessel, which decision was later upheld by the Commissioner of Customs on August 21, 2008.[6]

On automatic review, respondent in his 1st Indorsement dated September 17, 2008, reversed and set aside the lifting of the WSD and ordered the forfeiture of the Vessel on the basis of the records of the Philippine Ports Authority, among others. Respondent resolved that the Vessel entered the Philippine territory contrary to law.[7] The dispositive portion reads:

> "In view of the foregoing, the Order of District Collector, POM in Seizure Identification Case No. 2008-054 lifting the Warrant of Seizure Detention (WSD) issued against M/V Coco Explorer 2 a.k.a. M/V 7,107 Islands Cruise is hereby **REVERSED AND SET ASIDE**. Accordingly, the subject vessel is hereby **FORFEITED** for proper disposal in compliance with existing pertinent laws and regulations."

On October 27, 2008, petitioner filed a Motion for Reconsideration, which respondent denied in his 1st Indorsement dated May 6, 2009.[8] Petitioner filed a Motion for Leave to Admit Second Motion for Reconsideration. This was likewise denied in the 1st Indorsement dated June 22, 2009.[9]

On July 30, 2009, petitioner filed the instant Petition for Review in order to assail the adverse decision of respondent.

Petitioner prays for the issuance of a temporary restraining order (TRO) and/or preliminary injunction enjoining respondent, subordinates and agents, from enforcing the forfeiture order of the Vessel or issuance of an

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[6] Par. 4, Stipulation of Facts, JSFSI, *rollo,* p. 1077.
[7] Par. 5, Stipulation of Facts, JSFSI, *rollo,* pp. 1077-1078; Annex "C", Petition for Review, *rollo,* pp. 56-59.
[8] Par. 6, Stipulation of Facts, JSFSI, *rollo,* p. 1078; Annex "B", Petition for Review, *rollo,* pp. 46-55.
[9] Annex "A", Petition for Review, *rollo,* p. 45.

order suspending the implementation of the order of forfeiture of the Vessel; the temporary release *pendente lite* of the Vessel under bond; the setting aside and reversal of respondent's orders; and the release of the Vessel to petitioner.

Thereafter, due hearing and presentation of evidence for both parties were conducted with respect to petitioner's application for a TRO and prayer for the release of the Vessel *pendente lite*.

On September 30, 2009, respondent filed his Answer enumerating his affirmative defenses.

In a Resolution dated November 11, 2009, this Court ruled in favor of respondent and denied petitioner's prayer for the issuance of a TRO and temporary release of the Vessel under bond. This Court held as follows:

> "Based on the above requisites, petitioner failed to prove the existence of a clear and unmistakable right at the time of the filing of the Petition for Review where the prayer for the issuance of temporary restraining order and preliminary injunction are embodied. xxx
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> xxx xxx xxx
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> Moreover, the implementation or enforcement of forfeiture consists of the **seizure of the Vessel**. In the present case, the implementation of the forfeiture order has already been effected upon the seizure of the Vessel. It should be emphasized that an injunction would not lie where the acts sought to be enjoined have already become a *fait accompli* or an accomplished or consummated act.
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> With respect to the prayer for the release of the Vessel, *pendent (sic) lite*, We reiterate our ruling denying the release of the Vessel under bond upon findings of the existence of *prima facie* fraud. xxx."

On December 2, 2009, petitioner filed a Motion for Reconsideration of the above Resolution, but it was denied. So, petitioner elevated the instant

issue to the Supreme Court, questioning the denial of its prayers for a TRO and the release of the Vessel *pendente lite*. However, the petition was dismissed on July 21, 2010 for petitioner's failure to show any grave abuse of discretion on the part of this Court, among others.

On May 27, 2010, petitioner formally offered its evidence and in a Resolution issued on July 6, 2010, petitioner's Exhibits "A", "B", "C", "E", "F", "G", "H", "I", "K", "N", "O", "P", "Q", "S" to "X" were admitted, whereas Exhibits "D", "J", "L", "M", "R", "Y", and "Z" were denied.

On June 21, 2010, petitioner filed a "Motion for Early Resolution and/or Summary of Judgment", with respondent interposing his opposition thereto.

In a Resolution dated August 16, 2010, the motion was denied. Petitioner's motion for reconsideration was likewise denied on October 22, 2010.

Respondent submitted in evidence Exhibits "1" to "25-a" on March 25, 2011. But only Exhibits "1" to "6-a", "15", "17", "20", "21", "23", "24", "25" and "25-a" were admitted.

On August 15, 2011, petitioner filed a "Motion for Temporary Use Vessel", with respondent opposing said motion. The said motion was denied on November 3, 2011.

On September 14, 2011, the instant case was submitted for decision after the filing of petitioner's Memorandum on August 18, 2011 and "Supplement (To the Memorandum of 18 August 2011)" on September 9, 2011, and respondent's Memorandum on September 9, 2011.

The parties submitted the following issue for this Court's resolution:

> "Whether or not the decision of respondent reversing the decision of the Commission of Customs ordering the release of the Vessel and ordering the seizure and forfeiture of the Vessel was in accordance with law."

Petitioner contends that the entry of the Vessel in the Port of Batangas was for repairs. This is evidenced by the letter of C&C Marine A/S to the BOC and the "Oath on Entering from Foreign Port" executed by Captain Jose P. Garcia of C&C Marine A/S. Likewise, it was issued a clearance to sail from Batangas to Bataan for repairs. Petitioner concludes that since the item is not an item of importation, the Vessel should not be subjected to the "formalities of customs import clearance" and Sections 1202 and 105 of the Tariff and Customs Code of the Philippines (TCCP).

Petitioner also argues that there is no basis for the forfeiture of the Vessel for violation of Section 2530 of the TCCP. Respondent has not shown that C&C Marine A/S or that petitioner had employed fraudulent means to violate the said provision.

Petitioner claims that the Vessel was cleared for entry into the Philippines for repairs and C&C Marine A/S complied with the requirements for the entry of a vessel for that purpose, apprised the Collector of the Port of Batangas of these circumstances, and paid the applicable regulatory fees and charges. Therefore, there was nothing irregular or illegal with the entry of the Vessel in the country.

Petitioner also insists that payment of applicable customs duties and taxes is required only after the approval of its application for "Authority to Acquire Vessel through Importation/Outright Purchase" by the Maritime

Industry Authority (MARINA) in accordance with the procedure adopted in the rules implementing Republic Act (RA) No. 9295. In fact, one of the Post Approval Documents for the application is proof of payment of customs duties and taxes.

Petitioner asseverates that respondent's authority to conduct automatic review of the decision to release the Vessel was limited to a review of the decision in the seizure proceedings based on evidence on record. Thus, he is bound only by the evidence on record. However, in reversing the decision to release the Vessel, respondent justified his action by relying on evidence not found in the records of the seizure proceedings conducted before the Law Division of the Port of Manila, on circumstances which transpired after the Vessel had been seized and while the case was being reviewed by respondent, and on conclusions which were based on unverified findings.

Finally, it claims that the RATS Group failed to establish probable cause before issuing the Warrant of Seizure and Detention. For the seizure of imported goods to be valid, the finding of probable cause should be in writing. However, there is nothing in the records of the seizure proceedings that shows that there was a prior determination of *prima facie* evidence, which was necessary for the valid issuance of a Warrant of Seizure and Detention of the Vessel.

This Court finds petitioner's allegations unmeritorious.

At the onset, a clarification of whether there was importation or not is in order. Importation consists of bringing an article into the country from the outside. Importation is complete when the taxable, dutiable commodity is brought within the limits of the port of entry. Entry through a customs house is

not the essence of the act.[10] Simply stated, to import is to bring goods into a domestic port from a foreign country. Nothing is imported until it comes within the limits of the port.[11]

Equally important is Section 1202 of the TCCP which provides that importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines **with intention to unload therein**.

It is clear from the provision of the law that mere intent to unload is sufficient to commence an importation. And "intent," being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore can only be proved by unguarded expressions, conduct and circumstances generally.[12]

A review of the peculiar factual circumstances availing in this case will show that there was "intent to unload" the vessel when it entered the Philippine territory.

According to petitioner, the subject Vessel entered the Philippines for purposes of repair. However, the same is not supported by the evidence on record. When it entered the Port of Batangas and during the entire time that it was anchored therein, no repair was actually started or done. If it was really the intention of C&C Marine A/S (then owner of the Vessel) to repair the vessel, repairs should at least have been started.

On the contrary, the Vessel was sold to Mr. Esteban Tajanlangit, in representation of a corporation still to be formed (petitioner), who allegedly

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[10] *Jardeleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006.
[11] Ferdinand Asejo Nague, Handbook on the Tariff and Customs Code of the Philippines, as amended, and the Customs Brokers Act of 2004, First Edition (2005), p. 53.
[12] *Feeder International Line, PTE., LTD, et al. vs. Court of Appeals, et al.,* G.R. No. 94262, May 31, 1991.

inspected the said Vessel twice in the previous years.[13] Thereafter, the Vessel secured a clearance to sail to Mariveles, Bataan for repairs on November 27, 2007. And, as stated by Mr. Esteban Tajanlangit in his Judicial Affidavit, the Vessel was drydocked in Bataan and was brought to Manila for repairs.[14] Notably, the repairs were done only when the Vessel was already owned by petitioner.

No sufficient evidence, documentary or testimonial, was submitted to substantiate petitioner's allegation that the Vessel entered the country only for repairs. Quite the reverse, the pieces of evidence presented by petitioner indicate that the Vessel was really intended to be delivered for purchase by Mr. Esteban Tajanlangit. The repairs done were to prepare the Vessel for its intended use in the Philippines.

Thus, when the subject Vessel entered the Port of Batangas as an imported article to be purchased by petitioner, it is correspondingly subject to the provisions of Sections 100 and 1201 of the TCCP.

The TCCP is clear that "all articles when imported from any foreign country into the Philippines, shall be subject to duty upon each importation"; Section 100 of the TCCP provides that:

> "SECTION 100. *Imported Articles Subject to Duty.* - All articles when imported from any foreign country into the Philippines, shall be subject to duty upon each importation, even though previously exported from the Philippines, except as otherwise specifically provided for in this Code or in other laws."

[13] Testimony of Mr. Tajanlangit during his cross examination during the September 9, 2009 hearing, TSN, pp. 41-51.
[14] Exhibit "A".

Section 1201 of the same law also requires that all imported articles shall be entered through a customhouse at a port of entry, whether they are subject to duties or not. The said provision reads:

> "SECTION 1201. *Article to be Imported Only Through Customhouse*. – All articles imported into the Philippines whether subject to duty or not shall be entered through a customhouse at a port of entry."

The mandates of the law are very clear. It imposes the obligations upon all imported articles to pass through customhouse and to pay duties unless the importer/consignee can explicitly identify its exemption under the law. This, petitioner failed to do.

This Court cannot accept petitioner's insistence that its liability to pay customs duties arises only after its application for registration with the MARINA was approved. Such is never considered in so far as the obligation to pay customs liability or exemption from it is concerned. Neither can such allegation counter the Supreme Court's interpretation that importation happens upon entry of dutiable article from foreign port to the Philippines.

Furthermore, the implementing rules[15] of RA No. 9295 do not support petitioner's contention. There is nothing in the said rules which states that the importation of the subject Vessel is subject to customs taxes and duties only after its "Application for Authority to Acquire Vessel through Importation/Outright Purchase" had been approved by the MARINA.

It must be pointed out that Section 105 of the TCCP allows as "conditionally free importations" articles brought into the Philippines for repair

[15] Rules and Regulations Implementing Republic Act No. 9295, Entitled "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, and Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and for Other Purposes.

but to be re-exported after the repair. However, such instance is conditioned upon the filing of a bond, to wit:

> "SECTION 105. *Conditionally-Free Importations*. –
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> xxx xxx xxx
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> d. Articles brought into the Philippines for repair, xxx to be re-exported upon completion of the repair xxx: *Provided*, That the Collector of Customs shall require the giving of a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereon, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry;"

However, petitioner's pieces of evidence failed to show compliance with the above-quoted conditions.

There being findings that petitioner imported the subject Vessel, the next issue is whether or not the forfeiture thereof was justified.

Section 2530 of the TCCP enumerates the properties/articles subject to forfeiture, to wit.

> "SECTION 2530. *Property Subject to Forfeiture Under Tariff and Customs Law*. - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:
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> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;
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> b. Any vessel engaging in the coastwise which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores,

without such article having been properly entered or legally imported;

c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination;

d. Any part of the cargo, stores or supplies of a vessel or aircraft arriving from a foreign port which is unladen before arrival at the vessel's or aircraft's port of destination and without authority from the customs officials; but such cargo, ship or aircraft stores and supplies shall not be forfeited if such unlading was due to accident, stress of weather or other necessity and is subsequently approved by the Collector;

e. Any article which is fraudulently, concealed in or removed contrary to law from any public or private warehouse, container yard or container freight station under customs supervision;

f. **Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or the exportation of the former;**

g. Unmanifested article found on any vessel or aircraft if manifest therefore is required;

h. Sea stores or aircraft stores adjudged by the Collector to be excessive, when the duties assessed by the Collector thereon are not paid or secured forthwith upon assessment of the same;

i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law;

j. Boxes, cases, trunks, envelopes and other containers of whatever character used as receptacles or as device to conceal article which is itself subject to forfeiture under the tariff and customs laws or which is so designed as to conceal the character of such articles;

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

l. Any article sought to be imported or exported.

(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;

(2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government." (*Emphasis supplied*)

Based on the foregoing, **any article the importation or exportation of which is effected or attempted contrary to law** or **any article sought to be imported through any other practice or device contrary to law by means of which such articles were entered through a customhouse to the prejudice of the government** would be subject to forfeiture.

The subject Vessel was imported without passing through a customhouse, and without proper documentation and payment of applicable customs taxes, duties and charges. Likewise, it entered the Port of Manila without necessary customs clearance. Therefore, it was imported contrary to law.

With respect to the findings of fraud, actual or intentional fraud consists of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[16] It must amount to intentional wrong-doing with the sole object of avoiding the tax.[17]

At first glance, there is nothing wrong with a foreign vessel entering the Philippine ports for repair and after twenty days became the subject of a Memorandum of Agreement for its purchase by a Filipino. Such can happen in business scenarios.

However, what is glaringly noticeable and which led this Court to believe that there was intent to deprive the government of taxes due on the importation of the Vessel was the series of events that transpired prior to the seizure of the Vessel.

In addition to the fact that the "alleged intent to repair" was defeated by the evidence on hand, it bears stressing that notwithstanding the purchase of the vessel in November 2007, there was no attempt to comply with the legal formalities and regulations of the MARINA and the BOC.

On January 21, 2008, the Chief of the *Run After The Smugglers* Group of the Bureau of Customs issued a *subpoena* on the Vessel, seeking

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[16] *Hon. Farolan, Jr. vs. Court of Tax Appeals, et al.*, 217 SCRA 298.
[17] *Aznar vs. Court of Tax Appeals, et al.,* G.R. No. L-20569, August 23, 1974 (58 SCRA 519).

explanation on the presence of the Vessel in Philippine territory. Petitioner filed an application for an authority to acquire the Vessel with the MARINA on March 3, 2008[18], which to this Court is a mere afterthought and as a result of the *subpoena* issued by the RATS Group.

Its authority to acquire was approved by the MARINA on May 6, 2008.[19] Then, while its papers and registration were being processed with the MARINA, it registered itself with the Subic Bay Freeport Zone and was issued the corresponding Certificate of Registration and Tax Exemption on January 22, 2009.[20]

On February 4, 2009, petitioner finally executed an Import Entry and Internal Revenue Declaration (IEIRD), declaring itself as the importer of the Vessel but with a notation "tax and duty free importation under RA 7227, as amended."[21]

It follows that it was only when petitioner was issued the said Certificate that it decided, under the assumption that it is free from taxes, to declare its importation of the Vessel; which is almost two years after the purchase of the Vessel.

The aforesaid events would lead a reasonable man to conclude that they were meant to circumvent the requirement of paying duties over the imported Vessel. They are badges of fraud on the part of petitioner. It appears that the events were planned to prevent petitioner from paying the import duties due on the Vessel when it entered the Philippines in 2007.

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[18] Exhibit "A".
[19] Exhibits "X" and "5".
[20] Exhibit "O".
[21] Exhibits "P" and "3".

Mr. Tajanlangit justifies the non-payment of customs taxes and duties even after the purchase of the Vessel with the available tax incentives by virtue of its registration with Philippine Economic Zone Authority and Subic Bay Freeport Zone.[22] But then, the purchase was made in 2007; while the Certificate of Registration and Tax Exemption from Subic Bay Freeport Zone was given only in 2009. Between 2007 and 2009, there is no certificate that petitioner may use. Be that as it may, the Certificate issued by Subic Bay Freeport Zone provides that exemption of petitioner from importation duties covers only "raw materials, capital equipment, and household and personal items for use solely within the Subic Bay Freeport Zone."

While it is true that the fraud contemplated by law is actual and not constructive, this Court also recognizes the principle that fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case.[23]

Let it be emphasized that forfeiture proceeding under tariff and customs laws is not penal in nature since it does not result in the conviction of the wrongdoer nor in the imposition upon him of a penalty; proof beyond reasonable doubt is not required in order to justify the forfeiture of the goods. The degree of proof required is merely substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[24]

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[22] TSN, August 17, 2009, pp. 59-62.
[23] *Republic vs. Gonzales*, 13 SCRA 633, 641.
[24] *Feeder International Line, PTE., LTD., et al. vs. Court of Appeals, et al.*, G.R. No. 94262, May 31, 1991.

In the case at bar, We find and so hold that respondent has sufficiently established that an illegal fraudulent importation, or at least an attempt thereof, has been committed.

With respect to petitioner's imputations that respondent's decision was not in conformity with the records and evidence and that there was no finding of probable cause as to justify the issuance of WSD by the BOC, the same must fail. There is a well-established presumption that government officials perform their functions with regularity and solid evidence is required to disprove this presumption. Unfortunately, petitioner failed to submit sufficient and convincing evidence that will overcome the presumption.

The instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice