



**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY**

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
**Plaintiff,**  
**Criminal Cases Nos. SB-16-CRM-0765 to 0767**  
For: Violation of Section 3(e),  
Republic Act (R. A.) No. 3019  
**- versus -**

**ROMULO DE MESA FESTIN,**  
**et al.,**

*Present:*

**Accused.**

**CABOTAJE-TANG, P.J.,**  
Chairperson  
**FERNANDEZ, B., J.** and  
**TRESPESES, Z.,<sup>1</sup> J.**

*Promulgated:*

June 6, 2018

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**RESOLUTION**

**CABOTAJE-TANG, PJ:**

For resolution is accused Romulo De Mesa Festin's *Motion for Reconsideration* dated April 17, 2018.<sup>2</sup>

Accused Festin prays for the reconsideration of the Court's Resolution promulgated on March 12, 2018, which

<sup>1</sup> J. Trespeses is a signatory to the assailed Resolution.

<sup>2</sup> pp. 334-342, Vol. II, Record

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denied his Motion to Dismiss dated January 18, 2018. He argues that contrary to the Court's finding, the narration of events by the prosecution clearly shows that there was an unreasonable delay of more than six (6) years. This period is reckoned from the time the COA conducted its fact-finding investigation on February 2010, until the Informations were filed with the Court on October 4, 2016; that the prosecution did not offer any explanation why it took the Office of the Ombudsman ten (10) months to approve the resolution finding probable cause against him; that it took the Office of the Ombudsman almost seven (7) months to direct accused Ornedo to file his counter-affidavit from the time he submitted his last pleading; and, that it took the Office of the Ombudsman another seven (7) months to re-assign the case to another graft investigation officer after accused Ornedo filed his counter-affidavit.<sup>3</sup>

Accused Festin also argues that "it is a misplaced reasoning for the Honorable Court to find fault on accused Festin's assertion of this right only after his arraignment and after he posted bail. For neither was it stated in the rules nor in the *catena* of cases decided by the Supreme Court, that an accused is barred in asserting this right after arraignment and after posting his bail.<sup>4</sup>

Finally, accused Festin argues that the delay caused him prejudice because the transactions subject of these cases occurred in 2004 or fourteen (14) years ago. Thus, the ability of the remaining accused to adequately prepare for their defenses and for them to recall the accuracy of the events are definitely impaired especially so that some of those material witnesses have either allegedly died or could no longer be located.<sup>5</sup>

The prosecution opposes subject motion on two (2) grounds, namely: [1] the motion for reconsideration was filed out of time; and, [2] the arguments raised in subject motion

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<sup>3</sup> pp. 339-340, Vol. II, Record

<sup>4</sup> pp. 340-341, Vol. II, Record

<sup>5</sup> p. 341, Vol. II, Record

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are a mere rehash of those pleaded and discussed in his motion to dismiss which had already been passed upon by the Court in its assailed Resolution.

Anent the first ground, the prosecution cites the Revised Guidelines for Continuous Trial of Criminal Cases which provides that a motion for reconsideration of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution.<sup>6</sup> It also argues that the COA investigation is not part of the preliminary investigation conducted by the Office of the Ombudsman because the preliminary investigation is independent from the investigation conducted by the COA which relates solely to the administrative aspect of the matter and does not foreclose the authority of the Ombudsman to investigate and determine whether there is a crime to be prosecuted.<sup>7</sup>

The Court finds the subject motion for reconsideration devoid of merit.

**First.** Section III, paragraph 2 (c) of A.M. No.15-06-10-SC or the Revised Guidelines for Continuous Trial of Criminal Cases provides:

2. Motions

...

(c) Meritorious Motions. - Motions that allege plausible grounds supported by relevant documents and/ or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, such as:

...

The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-

<sup>6</sup> at pp. 1-2, Opposition; pp. 346-347, Vol. II, Record

<sup>7</sup> at pp. 2-5, Opposition; pp. 347-350, Vol. II, Record

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extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.

Accused Festin himself admits that he received a copy of the assailed Resolution on April 5, 2018. Thus, accused had until April 10, 2018 within which to file his motion for reconsideration. However, he filed subject motion for reconsideration only on April 18, 2018.<sup>8</sup> Clearly, the subject motion was filed out of time.

At any rate, even if the subject motion were reasonably filed, the same lacks merit.

**Second.** An examination of the subject motion for reconsideration shows that accused Festin raises the same arguments, which he had raised in his motion to dismiss, in insisting that his right to speedy disposition of his cases was violated. To be sure, the said arguments were thoroughly considered and passed upon by the Court in its assailed Resolution, to wit:<sup>9</sup>

In **Remulla vs. Sandiganbyan**, the Supreme Court elucidated on the concept of the right to a speedy disposition of cases:

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are

<sup>8</sup> p. 334, Vol. II, Record

<sup>9</sup> at pp. 3-10, Resolution promulgated on March 12, 2018; pp. 314-321, Vol. II, Record; citations omitted



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asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo* was promulgated, this Court, in *Martin v. Ver*, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed apropos the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.

Applying the above ruling to these cases, the Court finds that there was no violation of accused Festin's right to a speedy disposition of his cases.

The chronology of events which led to the filing of these cases before the Court was spelled out by the prosecution in its opposition as follows:

2. The Commission on Audit conducted an audit and fact-finding investigation in February 2010 to verify the allegations in the letters-complaint of concerned citizens about the anomalous installation of electronic-National

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Government Accounting System (e-NGAS) and Real Property Tax and Assessment (RPTA) computerization in the Municipality of San Jose, Oriental Mindoro, and its purchase of four multi-cabs.

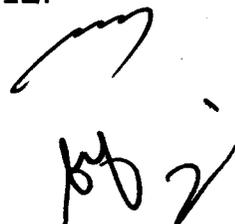
3. The report on the result of such audit was then forwarded to the Office of the Ombudsman on December 03, 2010 and was initially docketed as CPL-10-0788 for fact-finding investigation.

4. After fact-finding investigation, a complaint-affidavit was filed by the Public Assistance and Corruption Prevention Office for Luzon (PACPO-Luzon), represented by Marivic B. Dela Cruz, Associate Graft Investigation Office II, as nominal complainant, against therein public respondents Romulo M. Festin, Chonna C. Santos, Zenaida Dela Cruz, Carlos L. Bautista, Marie Joy C. Domingo, Lilia T. Dy-Echo, Pablo I. Alvaro, Noel N. Guerrero, Luceta C. Ancheta, Emmanuel P. Aguilar, Ethelita E. Ornedo, Emmanuel T. Agustin, Emiliano R. Villanada, William F. Almogel[a], Renato C. Tan, Joel G. Aguilar, Cesario C. Asilo, Edgardo S. Abeleda and Marjorie T. Sales; and private respondents Marlon Lim, Christel Daguio, Lourdes D. Castillo, Joseph Pierre and Burgonio Calimon. The said Complaint-Affidavit was docketed as OMB-L-C-12-0136-D/OMB-L-A-12-0155-D on **April 25, 2012**.

5. In **May 22, 2012**, it was assigned to a graft investigation and prosecution officer for preliminary investigation and administrative adjudication.

6. In an Order dated **May 29, 2012**, the respondents were directed to submit their respective counter-affidavits.

7. Respondent Alvaro filed his Counter-Affidavit on **August 14, 2012** while respondent Domingo filed his on **August 16, 2012**.

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8. Meanwhile, respondents Guerrero and Tan separately requested (by mail) an extension of time, which requests were received by the OMB-Luzon on August 16, 2012.

9. As per 1<sup>st</sup> Endorsement dated July 24, 2012 of Police Officer I Renato T. Padilla of San Jose Municipal Police Station, only the respective orders for respondents Festin, Agustin, Tan, Alvaro, Aguilar, Villanada, Domingo, Guerrero and Almogela were duly served. It appeared that some of the respondents are already deceased while the others are not residents of San Jose. Occidental Mindoro. The said endorsement was received by OMB-Luzon on August 16, 2012.

10. Respondent Almogela filed his Counter-Affidavit on **August 17, 2012**. Respondents Agustin and Villanada filed their respective Counter-Affidavits on **August 22, 2012**.

11. Respondents Dela Cruz and Guerrero, on one hand, and respondent Tan, on the other hand, filed (by registered mail) their respective Joint Counter-Affidavit and *Sinumpaang Kontra-Salaysay*, which were received by the OMB-Luzon on **September 6, 2012**.

12. Respondent Festin filed his Counter-Affidavit on **September 17, 2012**.

13. In an Order dated **03 April 2014**, respondent Ornedo was directed anew to file her Counter-Affidavit.

14. Respondent Ornedo requested (by mail) for an extension of time, which was received by OMB-Luzon on May 29, 2014. She then filed (by registered mail) her Counter-Affidavit, which was received on **June 17, 2014**.

15. On **January 26, 2015**, the case was re-assigned to another graft investigation officer.

16. The graft investigation and prosecution officer proceeded to resolve the



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complaint. A resolution was then prepared for review and/or revision through various levels of the Office of the Ombudsman.

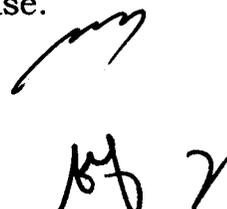
17. On **August 17, 2015**, the Ombudsman finally approved the Resolution dated 17 February 2015, finding probable cause to indict respondents Festin, Alvaro, Santos, Ornedo, Castillo, Lim and Daguio for varying counts of Violation of Section 3(e) of Republic Act No. 3019 and recommending the filing of the corresponding Informations before the Sandiganbayan.

18. On **October 26, 2015**, respondent Festin moved for the reconsideration of the said resolution, which was denied in an Order dated October 27, 2015. The said order was approved by the Ombudsman on **December 4, 2015**.

19. After a review of the sufficiency of the corresponding Informations, the same were filed before the Sandiganbayan on **October 4, 2016**.

The Supreme Court has held that the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman. However, for the purpose of determining whether a person's right to a speedy disposition of cases had been violated, the aggregate time spent for the said investigation must constitute inordinate and oppressive delay in the disposition of any case.

In these cases, the mere fact that it took the Office of the Ombudsman almost six (6) years to conclude the preliminary investigation, including the fact-finding investigation, does not automatically amount to a violation of accused Festin's right to a speedy disposition of his cases. To repeat, the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.



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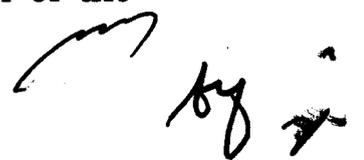
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The record of these cases shows that on December 3, 2010, the Office of the Ombudsman received a copy of a letter dated November 19, 2010, from the Legal Services Sector of the Commission on Audit (COA), forwarding to it a copy of the "investigation report on the result of the audit conducted on the alleged anomalies in the installation of the e-NGAS and RPTA computerization in the Municipality of San Jose, Occidental Mindoro (SJOM), and its purchase of four multi-cabs." After the fact-finding investigation, the Public Assistance and Corruption Prevention Office, the PACPO-Luzon, filed a complaint against **twenty-four (24) respondents** on June 30, 2011. In an Order dated May 29, 2012, the respondents were directed to submit their respective counter-affidavits. Ten (10) of the said respondents filed their respective counter-affidavits. In an Order dated April 3, 2014, respondent Ornedo was directed anew to file her counter-affidavit, which she did on **June 17, 2014**.

After the preliminary investigation, the graft investigator prepared a Resolution dated **February 17, 2015**, recommending the filing of Informations for violation of Section 3(e) of R.A. No 3019 on three (3) counts each against accused Festin and Alvaro; two (2) counts each against accused Santos and Ornedo; and, one (1) count each against accused Castillo, Lim and Daguio. The said recommendation was approved by the Ombudsman on **August 17, 2015**. Accused Festin filed a motion for reconsideration which was denied by the Office of the Ombudsman in its Order dated October 27, 2015 and approved by the Ombudsman on December 4, 2015. The Informations were thereafter filed before the Court on **October 4, 2016**.

Under the obtaining facts, the Court finds that the delay in the termination of the preliminary investigation was not unreasonable or oppressive. The respondents were given time to file their respective counter-affidavits, the last of which was filed on June 17, 2014, to refute the allegations against them. Necessarily, these counter-affidavits, together with the complaint and several documents, had to be thoroughly examined and studied by the Graft Investigator. The recommendation of the



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graft investigator was reviewed by the Bureau Director before it was submitted to the Ombudsman for her approval. The Informations had to be reviewed to determine the sufficiency of the allegations therein before filing them with the Court.

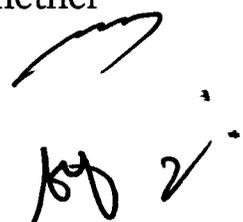
Indeed, there is no showing that the prosecution deliberately delayed the proceedings to gain an advantage or for other impermissible reasons. The delay was reasonable being part of the ordinary processes of justice.

Further, jurisprudence instructs that the assertion of the right to a speedy trial is entitled to strong evidentiary weight in determining whether a defendant is being deprived thereof. Failure to claim the right will make it difficult to prove that there was a denial of a speedy trial. In these cases, accused Festin is asserting his right to a speedy disposition of his cases only now after he was arraigned.

Concededly, the Supreme Court had ruled that there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. However, the High Court has similarly held that the right to speedy disposition of cases may be considered waived if not promptly invoked. Thus:

The right to a speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law. **One's right to the speedy disposition of his case must therefore be asserted. Due to the failure of petitioner to assert this right, he is considered to have waived it.**

The concept of "prejudice" as one of the factors to be considered and balanced in determining whether

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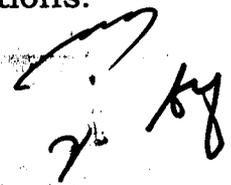
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there is a violation of the right to a speedy disposition of cases was explained in **Perez vs. People**, as follows:

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

In these cases, it cannot be said that accused Festin was unduly prejudiced by the "delay" given the fact that he immediately posted bail upon the filing of the cases.

Accused Festin claims that he suffered sleepless nights and stress because the issue in these cases was being used against him by his political opponents during the election. Admittedly, anxiety and stress accompany criminal charges. However, anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge to be a ground to decry a violation of the right to speedy disposition of cases. There is no affirmative showing of the obtainment of this circumstance in the case of accused Festin. In fact, he avers that, "fortunately, however, the voting public did not believe nor were convinced that there was inappropriate and corrupt act exercised act by herein accused in these transactions."



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Thus, accused Festin cannot successfully claim that he was unduly prejudiced by the alleged delay in the termination of the investigation conducted by the Office of the Ombudsman.

**Third.** The concept of a speedy disposition is a relative term and must necessarily be a flexible concept. The doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.<sup>10</sup> None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.<sup>11</sup>

Contrary to accused Festin's contention, the Court did not declare that accused Festin is barred from asserting his right to a speedy disposition of cases because he had already posted bail and that he was already arraigned.

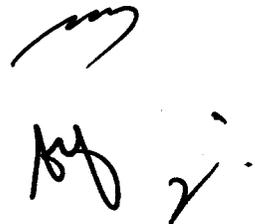
To be sure, in the balancing process, the Court considered several circumstances in determining whether accused Festin's right to speedy disposition of his cases was violated. It took into consideration that fact that accused Festin already posted bail, as among the circumstances, that shows that he was not prejudiced by the alleged delay. The Court declared:

The concept of "prejudice" as one of the factors to be considered and balanced in determining whether there is a violation of the right to a speedy disposition of cases was explained in **Perez vs. People**, as follows:

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<sup>10</sup> **Roquero vs. Chancellor of UP-Manila**, 614 SCRA 723 (2010)

<sup>11</sup> **Remulla vs. Sandiganbayan**, G.R. No. 21840, April 17, 2017

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A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

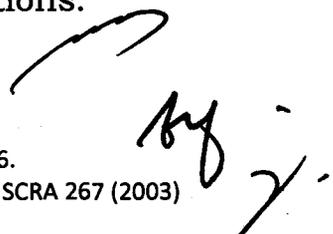
In these cases, it cannot be said that accused Festin was unduly prejudiced by the "delay" given the fact that he immediately posted bail upon the filing of the cases.<sup>12</sup>

Accused Festin claims that he suffered sleepless nights and stress because the issue in these cases was being used against him by his political opponents during the election. Admittedly, anxiety and stress accompany criminal charges. However, anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge to be a ground to decry a violation of the right to speedy disposition of cases.<sup>13</sup> There is no affirmative showing of the obtainment of this circumstance in the case of accused Festin. In fact, he avers that, "fortunately, however, the voting public did not believe nor were convinced that there was inappropriate and corrupt act exercised act by herein accused in these transactions."

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<sup>12</sup> p. 410, Vol. 1, Record; Accused Festin posted his cash bail bond on October 10, 2016.

<sup>13</sup> Separate Concurring Opinion of Justice Josue N. Bellosillo in *People vs. Lacson*, 400 SCRA 267 (2003)

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Thus, accused Festin cannot successfully claim that he was unduly prejudiced by the alleged delay in the termination of the investigation conducted by the Office of the Ombudsman.

Also, the fact that he was already arraigned when he invoked his right to a speedy disposition of cases is, again, another factor that shows that he failed to assert his right promptly. Thus, in its assailed Resolution, the Court held:

Further, jurisprudence instructs that the assertion of the right to a speedy trial is entitled to strong evidentiary weight in determining whether a defendant is being deprived thereof. Failure to claim the right will make it difficult to prove that there was a denial of a speedy trial. In these cases, accused Festin is asserting his right to a speedy disposition of his cases only now after he was arraigned.

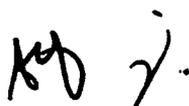
Concededly, the Supreme Court had ruled that there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. However, the High Court has similarly held that the right to speedy disposition of cases may be considered waived if not promptly invoked. Thus:

... ..

In sum, even on the merits, the motion fails to present any substantial arguments to warrant a reconsideration of the Court's Resolution promulgated on March 12, 2018.

**WHEREFORE**, the Court **DENIES** accused Romulo De Mesa Festin's *Motion for Reconsideration* dated April 17, 2018, for being *pro forma* and/or for lack of merit.

**SO ORDERED.**



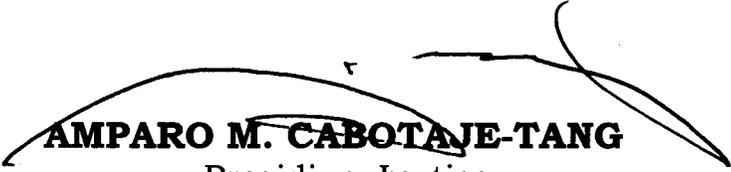
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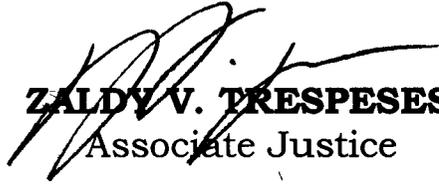
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

**WE CONCUR:**



**BERNELITO R. FERNANDEZ**  
Associate Justice



**ZALDY V. TRESPESES**  
Associate Justice