



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **November 8, 2023** which reads as follows:*

**“G.R. No. 264667 (NEW COAST HOTEL, INC., Petitioner, v. SECURITIES AND EXCHANGE COMMISSION, Respondent).** — This Court resolves a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals (CA), which affirmed the ruling of the Securities and Exchange Commission (SEC) holding petitioner New Coast Hotel, Inc. (New Coast) administratively liable for violation of Republic Act (R.A.) No. 7042, as amended by R.A. No. 8179, or the Foreign Investments Act of 1991 (FIA).

**Facts**

New Coast is a domestic corporation engaged in the business of operating, leasing, and managing hotels. At the time of its incorporation on October 11, 2022, New Coast was wholly owned by Megaworld Corporation (Megaworld), likewise a domestic corporation.<sup>4</sup>

On March 14, 2003, Megaworld sold majority of its shares in New Coast to CTF Hotel and Entertainment, Inc., a domestic subsidiary of Flexi Deliver Holding, Ltd., which in turn is a corporation registered in the British Virgin Islands.<sup>5</sup>

As a result of the sale, New Coast became majority-owned by a foreign corporation. Despite the foregoing change in its status, New Coast failed to file SEC Form F-101<sup>6</sup> with the SEC in violation of the FIA.<sup>7</sup>

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<sup>1</sup> *Rollo*, pp. 11–37.

<sup>2</sup> *Id.* at 39–56. The March 30, 2022 Decision in CA-G.R. SP No. 162644 was penned by Associate Justice Carlito B. Calpatura, and concurred in by Associate Justices Maria Elisa Sempio Diy and Alfonso C. Ruiz II, Seventeenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 58–60. The November 22, 2022 Resolution in CA-G.R. SP No. 162644 was penned by Associate Justice Carlito B. Calpatura, and concurred in by Associate Justices Maria Elisa Sempio Diy and Alfonso C. Ruiz II, Former Seventeenth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 39–40.

<sup>5</sup> *Id.* at 40.

<sup>6</sup> Entitled “Application of an Existing Corporation To Do Business Under the Foreign Investment Act (FIA) of 1991”.

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

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New Coast was subsequently monitored by the Company Registration and Monitoring Department (CRMD) of the SEC on July 4, 2007, October 28, 2009, and July 8, 2011.<sup>8</sup> However, the CRMD was unable to detect New Coast's violation of FIA from the documents available to it.

On July 17, 2014, New Coast filed an application to amend its Articles of Incorporation (AOI) with the SEC. It was then that CRMD discovered New Coast's failure to file SEC Form F-101. CRMD then issued a Monitoring Sheet to New Coast which imposed a penalty amounting to PHP 621,444.86 for their violation of the FIA. The approval of New Coast's application for its AOI amendment was conditioned on its payment of the penalties imposed under the Monitoring Sheet.<sup>9</sup>

On October 8, 2014, New Coast sent a letter to the CRMD requesting to cancel the penalties that it imposed against it on account of the same having already prescribed. It further requested that the CRMD approve its application for its AOI amendment pending resolution of its request for cancellation.<sup>10</sup>

On October 30, 2014, New Coast paid under protest the penalties imposed under the Monitoring Sheet. On November 11, 2014, the CRMD approved New Coast's application for the amendment of its AOI.<sup>11</sup>

Having treated New Coast's letter for cancellation as a Motion for Reconsideration, the CRMD issued an Order on November 20, 2014 which denied the same.<sup>12</sup>

New Coast appealed with the SEC *En Banc*. The SEC *En Banc* issued a Decision which denied New Coast's appeal and affirmed the penalty imposed against it.<sup>13</sup>

Undeterred, New Coast appealed the SEC ruling to the CA.<sup>14</sup> New Coast prayed for the reversal of the SEC *En Banc* Decision arguing that: (1) the SEC erroneously applied Act No. 3326, as amended by Act No. 3763, when it ruled that the SEC's right to penalize New Coast has yet to prescribe; (2) the SEC's right to impose a penalty for violation of the FIA is subject to the statute of limitations provided under Article 1149, in relation to Article 1139 of the Civil Code and such right had already prescribed; and (3) in any event, the SEC is already barred by laches from imposing any penalty against New Coast.<sup>15</sup>

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<sup>8</sup> *Rollo*, p. 40.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 41.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 41-42.

<sup>14</sup> *Id.* at 42.

<sup>15</sup> *Id.* at 42-43.

On March 30, 2022, the CA promulgated the assailed Decision.<sup>16</sup> The dispositive thereof states:

**WHEREFORE**, in view of the foregoing premises, the instant *Petition for Review* is **DENIED**. The *Decision* dated July 30, 2019 rendered by the SEC *En Banc* in SEC EB Case No. 12-14-351 is **AFFIRMED**.

**SO ORDERED.**<sup>17</sup> (Emphasis in the original)

In denying New Coast's appeal, the CA agreed with it that the SEC erred when it applied Act No. 3326, as amended, to determine the prescriptive period for administrative offenses under the FIA since it should only be applied to criminal offenses punished by special laws.<sup>18</sup> However, the CA found New Coast's invocation of Article 1149 of the Civil Code as basis for the prescriptive period for administrative offenses under the FIA not proper considering that it only pertain to "actions" with corresponding "right of action," while the penalty imposed against New Coast was the result of the SEC's exercise of power to impose penalties for violation of the FIA.<sup>19</sup> Finally, the CA held that the SEC was not barred by laches from penalizing New Coast since it immediately imposed a penalty on New Coast upon discovery of its violation of the FIA in 2014.<sup>20</sup>

New Coast moved for reconsideration<sup>21</sup> but the same was denied in the assailed Resolution.<sup>22</sup> The *fallo* thereof reads:

**WHEREFORE**, premises considered, the instant *Motion for Reconsideration* is **DENIED** for utter lack of merit.

**SO ORDERED.**<sup>23</sup> (Emphasis in the original)

Hence, the instant Petition.

New Coast argues that the CA erred when it affirmed its liability for violating the FIA.<sup>24</sup> It asserts that since the SEC should have discovered its offense as early as 2005 based on filings it made to the SEC, it is barred by prescription from acting on their violation.<sup>25</sup> New Coast likewise argues that

<sup>16</sup> *Id.* at 39–56.

<sup>17</sup> *Id.* at 55.

<sup>18</sup> *Id.* at 44–52.

<sup>19</sup> *Id.* at 52–53.

<sup>20</sup> *Id.* at 53–55.

<sup>21</sup> *Id.* at 58.

<sup>22</sup> *Id.* at 58–60.

<sup>23</sup> *Id.* at 60.

<sup>24</sup> *Id.* at 17–18.

<sup>25</sup> *Id.* at 18–25.

the SEC is barred by estoppel by laches from penalizing their violation of the FIA since it failed to immediately act on the same.<sup>26</sup>

On March 29, 2023, this Court issued a Resolution<sup>27</sup> directing the SEC to file a comment to New Coast's Petition.

On July 27, 2023, the SEC, represented by the Office of the Solicitor General (OSG), filed its Comment<sup>28</sup> to the present Petition. The OSG prayed for the denial of the instant Petition arguing that: (1) no error was committed by the CA when it held that Article 1149 of the Civil Code cannot be used as basis to say that New Coast's administrative offense had already prescribed as it only applies to actions;<sup>29</sup> and (2) the SEC is not barred by laches from sanctioning New Coast for its failure to comply with the law since the SEC immediately acted upon its discovery of New Coast's offense.<sup>30</sup>

### Issues

#### I.

Whether New Coast Hotel, Inc.'s liability for violating the reportorial requirements under the Foreign Investments Act of 1991 had already prescribed; and

#### II.

Whether the Securities and Exchange Commission is barred by laches from acting on New Coast Hotel, Inc.'s violation of the FIA.

### This Court's Ruling

The Petition is bereft of merit.

New Coast does not dispute that it violated the FIA and its implementing rules and regulations (FIA IRR) when it failed to file SEC Form F-101 with the SEC despite the change in the nationality of its majority owner. Section 5<sup>31</sup> of the FIA relevantly provides that a non-Philippine corporation

<sup>26</sup> *Id.* at 26-31.

<sup>27</sup> *Id.* at 61.

<sup>28</sup> *Id.* at 74-87.

<sup>29</sup> *Id.* at 77-80.

<sup>30</sup> *Id.* at 80-84.

<sup>31</sup> Section 5 of the FIA provides:

SEC. 5. Registration of Investments of Non-Philippine Nationals. - *Without need of prior approval, a non-Philippine national, as that term is defined in Section 3 a), and not otherwise disqualified by law may, upon registration with the Securities and Exchange Commission (SEC), or with the Bureau of Trade Regulation and Consumer Protection (BTRCP) of the Department of Trade and Industry in the case of single proprietorships, do business as defined in Section 3 d) of this Act or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-*

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must register with the SEC before it does business in the country or invest in a domestic corporation. New Coast however claims that it could no longer be sanctioned by the SEC considering that prescription and/or laches has already set in.<sup>32</sup> However, a review of the circumstances surrounding the case, as well as relevant law and jurisprudence, shows that the SEC is not barred by either from penalizing New Coast.

*New Coast's Administrative Liability  
for Violating the FIA is  
Imprescriptible.*

New Coast argues that the lack of any prescriptive period for offenses under the FIA is not tenable and that the prescriptive period provided under the Civil Code, specifically Article 1149 of the same, should be made to apply to it.<sup>33</sup>

This Court disagrees.

It is settled that prescription is statutory<sup>34</sup> and hence an exercise of the power of law-making bodies to legislate. In the absence of any prescriptive period provided in statute, courts cannot be made to conjure one for the benefit of any party. Courts cannot impose conditions or limitations to the application of laws where none is provided for as the same would amount to rewriting the law which is “a forbidden ground that only Congress may tread upon.”<sup>35</sup> Relevantly, in *Citibank (N.A.) v. Tanco-Gabaldon*,<sup>36</sup> upon ruling that Congress did not indicate any prescriptive period for administrative offenses under R.A. No. 8799 or the Securities Regulation Code (SRC), this Court immediately pivoted towards determining if laches is applicable:

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*Philippine nationals in the enterprise is prohibited or limited to a smaller percentage by existing law and/or under the provisions of this Act.* The SEC or BTRCP, as the case may be, shall not impose any limitations on the extent of foreign ownership in an enterprise additional to those provided in this Act: Provided, however, That any enterprise seeking to avail of incentives under the Omnibus Investment Code of 1987 must apply for registration with the Board of Investments (BOI), which shall process such application for registration in accordance with the criteria for evaluation prescribed in said Code: Provided, finally, That a non-Philippine national intending to engage in the same line of business as an existing joint venture, in which he or his majority shareholder is a substantial partner, must disclose the fact and the names and addresses of the partners in the existing joint venture in his application for registration with SEC. During the transitory period as provided in Section 15 hereof, SEC shall disallow registration of the applying non-Philippine national if the existing joint venture enterprise, particularly the Filipino partners therein, can reasonably prove they are capable to make the investment needed for the domestic market activities to be undertaken by the competing applicant. Upon effectivity of this Act, SEC shall effect registration of any enterprise applying under this Act within fifteen (15) days upon submission of completed requirements. (Emphasis supplied)

<sup>32</sup> *Id.*

<sup>33</sup> *Rollo*, pp. 18–25.

<sup>34</sup> *Lorenzo v. Eustaquio*, G.R. No. 209435, August 10, 2022, [Per J. Hernando, First Division] citing *Sps. Aboitiz v. Sps. Po.* 810 Phil. 123 (2017) [Per J. Leonen, Second Division].

<sup>35</sup> *CIR v. American Express International, Inc. (Philippine Branch)*, 500 Phil. 586, 608 (2005) [Per J. Panganiban, Third Division].

<sup>36</sup> 717 Phil. 365 (2013) [Per J. Reyes, First Division].

Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders. Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law. And though laches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.<sup>37</sup> (Citations omitted)

More, with respect to prescription of administrative offenses, this Court's ruling in *People v. Pacificador*<sup>38</sup> is instructive as to when the same can be applied:

It bears emphasis, as held in a number of cases, that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted. *The said legal principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender.* In the case of *People v. Moran*, this Court amply discussed the nature of the statute of limitations in criminal cases, as follows:

The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence, *it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt[.]*<sup>39</sup> (Citations omitted, emphasis supplied)

Verily, the provision of a period for prescription of administrative liability can likewise be considered as a positive act of amnesty and liberality on the part of the state and not a demandable right. Considering the foregoing, when the state does not provide a prescriptive period provided for an administrative offense in the law, then none shall apply.

<sup>37</sup> *Id.* at 378-379.

<sup>38</sup> 406 Phil. 774 (2001) [Per J. De Leon, Jr., Second Division].

<sup>39</sup> *Id.* at 784.

In any event, contrary to New Coast's claim, Article 1149 of the Civil Code cannot be made to apply to administrative offenses under the FIA. The provision relevantly provides:

**Article 1149.** All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

It is beyond cavil that the SEC's power to impose penalties for violation of the FIA and the FIA IRR is not an "action" occasioned by the accrual of a "right of action". In *Español v. Board of Administrators, Philippine Veterans Authority*,<sup>40</sup> this Court held that a "right of action" accrues when there exists a cause of action. In *Magellan Aerospace Corporation v. Philippine Air Force*,<sup>41</sup> this Court defined a "cause of action" as an act or omission by which a party violates a right of another.<sup>42</sup> Here, the imposition of the subject penalty to New Coast is not occasioned by it violating any legal right enjoyed by the SEC. Rather, it is an exercise of a power provided to the SEC to impose penalty for violations of the provisions of the FIA.

Section 5 of R.A. 8799 or the Securities Regulation Code enumerates the general powers and functions of the SEC which includes, among others, the power to impose sanctions for violation of laws and the rules, regulations, and orders pursuant thereto:

SECTION 5. *Powers and Functions of the Commission.* — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

....

(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;

....

Section 14 of the FIA explicitly empowers the SEC to impose administrative penalties against all violations of the provisions of the FIA IRR:

SEC. 14. Administrative Sanctions. - A person who violates any provision of this Act or of the terms and conditions of registration or of the rules and regulations issued pursuant thereto, or aids or abets in any manner any violation shall be subject to a fine not exceeding one hundred thousand pesos (P100,000).

<sup>40</sup> 221 Phil. 667 (1985) [Per J. Makasiar, *En Banc*].

<sup>41</sup> 781 Phil. 788 (2016) [Per J. Mendoza, Second Division].

<sup>42</sup> *Id.* at 794.

If the offense is committed by a juridical entity, it shall be subject to a fine in an amount not exceeding  $\frac{1}{2}$  of 1% of total paid-in capital but not more than five million pesos (P5,000,000). The president and/or officials responsible thereof shall also be subject to a fine not exceeding two hundred thousand pesos (P200,000.00)

In addition to the foregoing, any person, firm or juridical entity involved shall be subject to forfeiture of all benefits granted under this Act.

*SEC shall have the power to impose administrative sanctions as provided herein for any violation of this Act or its implementing rules and regulations.*

Hence, no error was committed by the CA when it refused to apply Section 1149 of the Civil Code in determining the prescriptive period for violation of administrative offenses under the FIA since the latter made no reference to an applicable prescriptive period. In addition, Section 1149 of the Civil Code clearly cannot be applied to the FIA since the SEC's power to impose a penalty for violations of the same is not occasioned by the SEC acquiring a right of action, but an exercise of its power provided to it by law.

*The SEC is Not Barred by Laches from Sanctioning New Coast.*

Estoppel by laches or laches is defined as the "failure or neglect for an unreasonable or unexplained length of time to do that which by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it."<sup>43</sup> The doctrine of laches or of "stale demands" is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims, and is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

In *Go Chi Gun v. Co Cho*,<sup>44</sup> this Court identified the following as essential elements of laches: (1) conduct on the part of defendant, or of one under whom he claims, giving rise to the situation complained of; (2) delay in asserting complainant's right after he had knowledge of the defendant's conduct and after he has an opportunity to sue; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant.

<sup>43</sup> *Philippine Carpet Manufacturing Corporation v. Tagyamon*, 723 Phil. 562 (2013) [Per J. Peralta, Third Division].

<sup>44</sup> 96 Phil. 522 (1955) [Per J. Labrador, *En Banc*].

However, there is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its circumstances.<sup>45</sup> The question of laches is addressed to the sound discretion of the court, and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot work to defeat justice or to perpetrate fraud and injustice.<sup>46</sup>

Here, New Coast asserts that all the elements of laches are present, and the SEC is therefore barred from acting on its violation of the FIA.<sup>47</sup>

This Court finds otherwise.

*First*, it is hornbook doctrine that the jurisdiction of this Court in a Rule 45 [P]etition is generally limited to resolving questions of law.<sup>48</sup> Factual issues are outside the ambit of an appeal by *certiorari* since this Court is not a trier of facts.<sup>49</sup> In *Republic v. Malabanan*,<sup>50</sup> this Court held that the test to determine if a question is one of fact or law is “whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise[,] it is a question of fact.”<sup>51</sup>

Considering that laches is evidentiary in nature,<sup>52</sup> the issue of whether the SEC is barred by laches from penalizing New Coast is a factual issue, as this Court will be required to examine and weigh the evidence on record to determine if the elements of laches are present in the case. Though there are exceptions<sup>53</sup> to the general rule regarding the extent of this Court’s jurisdiction in an appeal by *certiorari*, none are present in this case which would warrant the deviation from the procedural standard.

*Second*, even if this Court can resolve New Coast’s claim of estoppel by laches, this Court finds that its allegation of delay on the part of the SEC in detecting and acting on its offense is unsubstantiated. Relevantly, New Coast claims that based on other documents that it filed with the SEC as early as 2005, i.e., General Information Sheets and applications for the amendment of its AOI and/or by-laws, the SEC could have easily deduced based on the information contained in the foregoing documents that New Coast failed to file SEC Form F-101 and accordingly impose a penalty for the same.<sup>54</sup> However, New Coast failed to attach the foregoing documents to the instant Petition and show that relevant information were present in those documents

<sup>45</sup> *Department of Education v. Casibang*, 779 Phil. 472, 482 (2016) [Per J. Peralta, Third Division].

<sup>46</sup> *Romero v. Natividad*, 500 Phil. 322 (2005) [Per J. Garcia, Third Division].

<sup>47</sup> *Rollo*, pp. 26–31.

<sup>48</sup> *Republic v. Espina & Madarang, Co.*, G.R. No. 226138, March 23, 2022 [Per J. Lopez, Third Division].

<sup>49</sup> *Lopez v. Suludo, Jr.*, G.R. No. 233775, September 15, 2021 [Per J. Hernando, Second Division].

<sup>50</sup> 646 Phil. 631 (2010) [Per J. Villarama, Jr., Third Division].

<sup>51</sup> *Id.* at 638.

<sup>52</sup> *Pineda v. Heirs of Guevarra*, 544 Phil. 554 (2007) [Per J. Tinga, Second Division].

<sup>53</sup> *Sps. Miano v. Manila Electric Co. [MERALCO]*, 800 Phil. 118 (2016) [Per J. Leonen, Second Division].

<sup>54</sup> *Rollo*, pp. 27–29.

that should have alerted the SEC of its violation. In the absence of any evidence for this Court to examine, no credence can be given to New Coast's claim that the SEC was negligent and incurred undue delay in imposing a penalty against it.

*Third*, even assuming *arguendo* that the elements of laches were present in the instant case, the State is not barred from penalizing New Coast for its violation of the FIA. Generally, the State cannot be put in estoppel by omissions, mistakes, or errors of its officials or agents.<sup>55</sup> In *Republic v. Court of Appeals*,<sup>56</sup> this Court discussed the exception to the foregoing rule:

The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exception, *viz.*:

*Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it.* Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens and must not play an ignoble part or do a shabby thing; and subject to limitations . . . , the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals[.]<sup>57</sup> (Citations omitted, emphasis supplied)

Here, it cannot be gainsaid that the interest of justice will not in any way be served by absolving New Coast from its administrative offense. Thus, there is no basis for this Court to waive the State's immunity from estoppel.

In sum, no error was committed by the CA when it held that neither prescription nor laches bar the SEC from penalizing New Coast for its violation of the FIA as the same is in accord with law and jurisprudence.

**FOR THESE REASONS**, the Petition is **DENIED**. The Decision dated March 30, 2022 and Resolution dated November 22, 2022 of the Court of Appeals in CA-G.R. SP No. 162644 are **AFFIRMED**. New Coast Hotel, Inc. is held **LIABLE** for violating Section 5 of Republic Act No. 7042, as amended, and is **FINED** the amount of PHP 621,444.86.

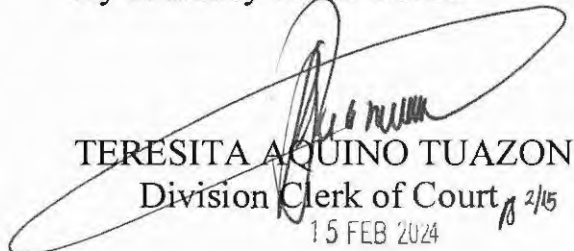
<sup>55</sup> *Belizario v. Department of Environment and Natural Resources*, G.R. No. 231001, March 24, 2021 [Per J. Caguioa, First Division].

<sup>56</sup> 361 Phil. 319 (1999) [J. Panganiban, Third Division].

<sup>57</sup> *Id.* at 329.

**SO ORDERED.”** (Leonen, *SAJ.*, on official business, Lazaro-Javier, *J.*, Acting Chairperson)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court 2/15  
15 FEB 2024

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