

Republic of the Philippines
COURT OF APPEALS
Manila

2023 JAN 20 PM 1:02

Thirteenth Division

SOUTH PREMIERE POWER CORP.
Petitioners,

- versus -

CA G.R. SP No. **176036**

**ENERGY REGULATORY COMMISSION,
MANILA ELECTRIC COMPANY,
NATIONAL ASSOCIATION OF
ELECTRICITY FOR REFORMS, INC.
AND URIEL BORJA,**

Respondents.

X -----X

COMMENT

[On Petitioner's Application for A Writ of Preliminary Injunction]

Private respondent National Association of Electricity Consumers for Reforms, Inc. (NASECORE), by undersigned counsel, respectfully states:

1. Petitioner comes to this Court with unclean hands. It is not entitled to a writ of preliminary injunction.

Counter-Statement of Facts

2. NASECORE is a consumer advocacy group, representing the thirty million electricity consumers in the country.
3. Over the years, it has won cases before the Energy Regulatory Commission (ERC) and even before the Supreme Court, benefitting the consumers to the tune of billions of pesos in refunds and influencing policies and regulations favoring the consumers. Among the cases are:
 - 3.1. *NASECORE vs. Energy Regulatory Commission*, G.R. No. 163935, 02 February 2006, nullifying the Generation Rate Adjustment Mechanism of the ERC;
 - 3.2. *NASECORE vs. Manila Electric Company*, G.R. No. 226443, 08 October 2019, directing the ERC to come up

with a methodology for determining the regulatory asset base of MERALCO in accordance with the “least cost” principle;

4. NASECORE has also zealously championed the interests of consumers before the Energy Regulatory Commission, Department of Energy, National Electrification Administration and other offices, through letters and interventions, winning favorable actions on such matters as meter deposits, ancillary services, electric bills, excessive salaries and emoluments of electric cooperative officials, among others. It has even succeeded in causing the dismissal of a NEA Administrator for corruption last year.
5. In the instant case, NASECORE filed a Petition for Intervention before the ERC in ERC Case No. 2019-081 RC on 04 December 2019, a copy of which is hereto attached as **Annex “1”**.
6. NASECORE actively participated in the proceedings *a quo*, filing the following pleadings:
 - 6.1. Comments and Motion for Amendment of the Captioned-Title of the Application, For Production of Documents and To Penalize Co-Applicant MERALCO to the Prayer for the Issuance of a Provisional Remedy on 19 December 2019 (**Annex “2”**);
 - 6.2. Motion for Production of Documents on 22 January 2020 (**Annex “3”**);
 - 6.3. Request for Subpoena Duces Tecum And/Or Ad Testificandum on 04 February 2020 (**Annex “4”**)
 - 6.4. Comment on the Joint Motion of Applicants MERALCO and SMEC on 22 June 2022 (**Annex “5”**);
 - 6.5. Comment Applicant MERALCO’s Urgent Manifestation, Urgent Manifestation and Opposition to SMEC and SPPC’s Respective Notice of Termination and Motion for Mandatory Inhibition, electronically filed on 06 September 2022 (**Annex “6”**).
7. With respect to the petition at bench, the principal case brought before the Commission was an “Application for the Approval of the Power Supply Agreement (PSA) Between Manila Electric Company (MERALCO) And South Premiere Power Corp. (SPPC), With Prayer for Provisional Authority And/Or Motion For Confidential Treatment of Information,” docketed as ERC Case No. 2019-081 RC.

8. In a nutshell, MERALCO and SPPC entered into a Power Supply Agreement on 22 October 2019, in which SPPC agreed to supply MERALCO with 670 MW of electricity at a fixed price for the first year of “PhP4.0459 per kWh, subject to twelve percent (12%) value-added tax (VAT) and an annual escalation as computed and shown in Schedule 1”. (**Annex “C,” petition**).
9. Hardly was the ink was dry when prices of fuel that SPPC used to run its generation plants started to spike up so that SPPC realized the fixed price of “PhP4.0459 per kWh” was a bad idea to start with, a gamble horribly gone wrong, so that SPPC had to invoke the “change in circumstance” clause in the PSA, entitling it to price escalation.
10. MERALCO obliged without much resistance, agreeing to file jointly with SPPC a “Joint Motion For Price Adjustment” dated 10 May 2022, asking for approval of the following price increases:

Billing Period	Blended Contract Price (PhP/kWh)	Proposed Contract Price Adjustment (PhP/kWh)	Adjusted Blended Contract Price (PhP/kWh)
Jan 2022	4.3163	1.4825	5.8098
Feb 2022	4.2435	0.3209	4.5841
Mar 2022	4.2620	0.5867	4.8764
Apr 2022	4.3244	0.3698	4.6949
May 2022 (F)	4.3077	1.2362	5.5606

11. Note that the price adjustments sought (to repeat, jointly by both applicants) ranged from Php .3209/kwh to Php 1.4825/kwh for a period of five (5) months, covering the period from January 2022 to May 2022.
12. But then the price of fuel continued its relentless upward trend, driven by the war in Ukraine and an export ban on coal by Indonesia.
13. To SPPC, merely asking for a price increase no longer seemed a sound business decision. SPPC resorted to something drastic – tearing up its contract with MERALCO thereby escaping its contractual obligations entirely.
14. The way SPPC tried to weasel out of its contract – and dump MERALCO along the way – was highly irresponsible, amounting to malpractice on the part of its lawyers.
15. Instead of withdrawing its application for approval of its PSA, or seeking the Commission’s approval for its action, SPPC served its

erstwhile ally MERALCO with a Notice of Termination of the PSA on 04 August 2022, which is the height of duplicity – considering that MERALCO was its co-applicant in the main case and co-signatory to the Joint Motion.

16. It was left to MERALCO to bring the termination to the attention of the ERC via an *Urgent Manifestation* dated 05 August 2022 (**Annex “R”, petition**). In a narration reeking of arrogance and tinged with contumacy, SPPC admitted to this Court as follows:

“70. In this case, SPPC’s Notice of Termination dated 4 August 2022 was only brought to the ERC’s attention through MERALCO’s *Urgent Manifestation* dated 5 August 2022. It was never made an issue in the *Joint Motion for Price Adjustment* or in any other subsequent pleading. By its clear terms, the *Urgent Manifestation* was only meant to apprise the ERC of the steps that MERALCO would need to take to replace the 670 MW sourced under the PSA. The ERC itself was aware that the *Urgent Manifestation* did not raise any new issues for its determination and even noted in the *Assailed ERC Order* that no prayer was contained therein.” (p. 32, paragraph 70, petition).

17. In other words, SPPC presented the ERC with a *fait accompli* – the termination of the PSA – while the main case and the Joint Motion were pending, leaving the ERC with nothing to approve in its hands – since the PSA was now a scrap of paper.
18. Nevertheless, the ERC saw it fit to rule on the Joint Motion – since it was never withdrawn either by MERALCO or SPPC, the joint signatories. Thus, on 29 September 2022, public respondent ERC issued the Assailed Order, the dispositive portion of which states:

“WHEREFORE, foregoing premises considered, the *Joint Motion for Price Adjustment* dated 10 May 2022 filed by Applicants Manila Electric Company (MERALCO) and South Premiere Power Corporation (SPPC) is hereby **DENIED**.

The *Urgent Manifestation* dated 05 August 2022 and 19 September 2022 filed by MERALCO are hereby **NOTED**.

“SO ORDERED”

19. The above order is now subject of this petition for certiorari under Rule 65, accompanied with a prayer for provisional remedy, the issuance of a temporary restraining order and/or writ of preliminary injunction.

**GROUND FOR DENIAL OF THE APPLICATION FOR
A WRIT OF PRELIMINARY INJUNCTION**

I

**THE INJURY CLAIMED BY PETITIONER IS NOT OF
THE KIND OR NATURE THAT CAN BE REMEDIED
BY INJUNCTION.**

II

**THE REMEDY SOUGHT BY PETITIONER IS FAR
TOO EXPANSIVE AND EXCESSIVE VIS-À-VIS THE
REMEDY IT SOUGHT BEFORE THE COMMISSION
A QUO.**

III

**THIS HONORABLE COURT CANNOT ISSUE AN
INJUNCTION AGAINST AN INJUNCTION THAT
DOES NOT EXIST.**

IV

**THIS HONORABLE COURT CANNOT RESCUE
PETITIONER FROM BAD BUSINESS DECISIONS.**

DISCUSSION

20. It is plain from the above narration that SPPC comes to this Court with unclean hands. Considering its bad faith in its dealings with MERALCO and violations of the ERC's Rules of Procedure, it is not entitled to any kind of relief at all from this Honorable Court.
21. Nonetheless, we will deal with the merits of petitioner's application for a writ of preliminary injunction.

I

**THE INJURY CLAIMED BY PETITIONER IS NOT OF
THE KIND OR NATURE THAT CAN BE REMEDIED
BY INJUNCTION.**

22. The requisites for the issuance of a writ of preliminary injunction are as follows:
 - (1) The existence of a right *in esse*;
 - (2) Violation of a right;
 - (3) An urgent need for the writ to prevent irreparable injury to the applicant; and

- (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

(St. James College of Paranaque vs. Equitable PCI Bank, 641 Phil. 452, 466 [2010] citing Bifian Steel Corporation v. Court a/Appels, 439 Phil. 688, 703-704 (2002) and Hutchison Ports Philippines Ltd v. Subic Bay Metropolitan Authority, 393 Phil. 843, 859 [2000])

23. As to the first requisite, petitioner came to the Commission *a quo* waving a right arising from contract (one of the sources of obligation, the others being law, delict, quasi-delict) in the form of the Power Supply Agreement with MERALCO. Unfortunately, improvidently, petitioner threw this right away, by unilaterally terminating the same – leaving it nothing to stand on, except some vague, tenuous, illusory right arising from alleged acts of the Commission in issuing an “injunction against the termination of the Power Supply Agreement dated 13 September 2019” as stated in its prayer.
24. Absent this right, petitioner is not entitled to an injunction.
25. Petitioner’s cause of action against the Commission is not a concrete right *in esse* as to be enforceable. A right *in esse* is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law (*Tomawis v. Tabao-Caudang, G.R. No. 166547, September 12, 2007, 533 SCRA 68, 85*). Petitioner is hard-pressed to articulate its right. It resorted to making wild allegations not founded on facts, for which reason petitioner’s counsel should be sanctioned for chicanery or plain dishonesty.
26. Differently stated, “where the plaintiff’s right is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction.” (*Bicol Medical Center vs. Boto, G.R. No. 214073, October 04, 2017*).
27. With respect to the third requisite – irreparable injury – petitioner claims it stands to “absorb running losses in the staggering amount of at least **Php 1.4 billion** for the service it renders to the public” (*par. 157, p. 69, petition*). This makes the damage **quantifiable**. The fact that it is in the billions is of no moment because of the nature of the business petitioner ventured into, the power industry, which typically requires tens of billions of pesos to capitalize.
28. In a long line of cases, the Supreme Court has ruled that a writ of injunction should not issue to remedy a damage that is quantifiable in terms of money. “[I]t should never issue when an action for

damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.” (*Golding vs. Balatbat*, G.R. No. 11130, October 8, 1917.”

29. The invasion of plaintiff’s rights must be of “such a character that the damages which result therefrom "cannot be measured by any certain pecuniary standard." (*Liongson v. Martinez*, 36 Phil. 948).

II

THE REMEDY SOUGHT BY PETITIONER IS FAR TOO EXPANSIVE AND EXCESSIVE VIS-À-VIS THE REMEDY IT SOUGHT BEFORE THE COMMISSION A QUO.

30. It is regrettable that this Honorable Court issued a temporary restraining order that went far beyond the remedy sought by petitioner before the Energy Regulatory Commission.
31. In its Resolution dated 23 November 2022, the Court directed:
- “Hence, in view of the circumstances and in the interest of the general public, this Court grants the TRO and hereby **suspends the implementation of the PSA**. The TRO shall be effective for the period of 60 days from service on Respondents.” (*Emphasis supplied*).
32. This is either excessive or contradictory to what petitioner sought before the ERC. The immediate remedy sought by petitioner was the approval of a Joint Motion for Price Adjustment dated 10 May 2022 (**Annex “L”, petition**) filed together with co-applicant MERALCO.
33. The main case was for the “Application For the Approval of the Power Supply Agreement (‘PSA’) Between Manila Electric Company and South Premiere Power Corp.” – which was pending final resolution on the merits.
34. However, petitioner effectively **killed** the main case by serving Meralco a “Notice of Termination” of the Power Supply Agreement on 04 August 2022 – then slapping the Commission with a *fait accompli*, without prior courtesies, without withdrawing the Joint Motion or the application, without the consent of its co-applicant, MERALCO whom it dumped like a hot potato. This is a case of

chicanery that petitioner SPPC wantonly admitted committing in its pleading filed with this very Court.

35. Tus, in page 70 of its petition before this Court, petitioner blatantly admits:

“70. In this case, SPPC’s Notice of Termination dated 4 August 2022 was only brought to the ERC’s attention through MERALCO’s *Urgent Manifestation* dated 5 August 2022. It was never made an issue in the *Joint Motion for Price Adjustment* or in any other subsequent pleading. By its clear terms, the *Urgent Manifestation* was only meant to apprise the ERC of the steps that MERALCO would need to take to replace the 670 MW sourced under the PSA. The ERC itself was aware that the *Urgent Manifestation* did not raise any new issues for its determination and even noted in the *Assailed ERC Order* that no prayer was contained therein.” (p. 32, paragraph 70, petition).

36. In other words, the application for a TRO was already moot and academic because petitioner by its own unilateral act already **terminated** the PSA. There was nothing to suspend anymore.
37. From treating MERALCO at its partner and co-applicant, petitioner SPPC now considers it an adverse and hostile party. Worse yet, SPPC deliberately avoided informing directly the Commission of its termination of the PSA. It had to hand the Notice of Termination to MERALCO first, then leave the latter to deliver the bad news to the Commission via a manifestation.
38. Yet, here comes petitioner asking this Honorable Court to allow it to terminate the PSA. When in truth and in fact it had not already abrogated the contract.
39. It is a principle in law that a TRO cannot issue to reverse an accomplished fact. It is therefore incomprehensible that this Court, in the face of such skulduggery by petitioner, would grant the latter a temporary restraining order aforementioned.
40. This petition has bad faith written all over. It should be summarily denied.

III

THIS HONORABLE COURT CANNOT ISSUE AN INJUNCTION AGAINST AN INJUNCTION THAT DOES NOT EXIST.

41. Only an unscrupulous lawyer will have the gumption to lie to this Court as follows:

“WHEREFORE, premises considered, Petitioner respectfully prays that this Honorable Court:

“1. Upon the filing of this Petition, ISSUE A TEMPORARY RESTRAINING ORDER enjoining the ERC and MERALCO, their officers, agents, privies and all persons acting in obedience to them or under their direction, from in any manner implementing the *Assailed ERC Order* dated 29 September 2022 in ERC Case No. 2019-081 (**including ERC’s injunction against the termination** of the Power Supply Agreement dated 13 September 2019) or similar acts;”
(*Prayer, Petition, emphasis supplied*)

42. What injunction? The ERC never issued a writ of injunction against SPPC in any way, shape or form.
43. The dispositive portion of the Assailed Order merely states as follows:

“**WHEREFORE**, foregoing premises considered, the *Joint Motion for Price Adjustment* dated 10 May 2022 filed by Applicants Manila Electric Company (MERALCO) and South Premiere Power Corporation (SPPC) is hereby **DENIED**.

The *Urgent Manifestation* dated 05 August 2022 and 19 September 2022 filed by MERALCO are hereby **NOTED**.

“SO ORDERED”

44. The operative words in the Assailed Order are the words “**DENIED**” and “**NOTED**” (with reference to the Notice of Termination). Everything else is obiter dictum.
45. No injunction was ever issued by the ERC. On the contrary, if one were to read the opinion, the ERC instead encouraged the parties to avail themselves of the arbitration mechanisms in the PSA as a way to resolve the supervening controversy that arose in the middle of the proceeding, i.e., the sudden rise in fuel costs.
46. Be that as it may, a writ of preliminary injunction is not the remedy to compel the Commission to approve the unilateral termination of

the PSA, because that would be to the prejudice of the co-applicant MERALCO, an innocent party which is entitled to due process.

47. For the Court to lend its imprimatur to the termination of the PSA is to reward SPPC for its bad faith, plus more. It will free SPPC altogether from its obligation to supply the **670 MW** capacity it was contractually bound to deliver to MERALCO. The consequences to the public at large is dire. This will leave the market with a sudden shortfall of **670 MW** which, under the present circumstances, would only be available at prices far in excess of what were stipulated in the PSA.
48. Without a third party generator willing to contract with MERALCO for the supply of electricity under the same favorable terms as the PSA to which SPPC bound itself, MERALCO will be forced to buy the lost **670 MW** from the open market, specifically the WESM (Wholesale Electricity Spot Market), where prices are currently sky high and variable. All to the prejudice of the consumers.
49. The injunctive relief sought for does not serve the public interest. It leaves the consumers at the mercy of a volatile market. It rewards petitioner SPPC for its shenanigans.

IV

THIS HONORABLE COURT CANNOT RESCUE PETITIONER FROM BAD BUSINESS DECISIONS.

50. Petitioner's owners are not clueless amateurs who ventured into an industry they do not understand. They are part of a conglomerate with cross-ownerships in the generation sector, with tens of billions of pesos in assets, employing veterans in the energy industry, including even former officials of the Department of Energy and a battery of lawyers.
51. They entered into the PSA with MERALCO with open eyes, after requisite due diligence, reading the market optimistically. They gambled on a fixed price per kwh – hoping that the market would not turn against them – and lost. Spectacularly.
52. Granting for the sake of argument that they were reckless or ignorant still that does not entitle them to relief from the courts. In the eloquent language of the Supreme Court, in the words of Justice Moreland:

“All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relation with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves - upon their own abilities, talents, training, sense, acument, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense of judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. The law furnishes no protection to the inferior simply because he *is* inferior, any more than it protects the strong because he *is* strong. The law furnishes protection to both alike - to one or more or less than to the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome *illegally*. **Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them - indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold of the situation and remedy it.** (*Jose Vales vs. Simeon Villa, G.R. No. 10028, 16 December 1916*).

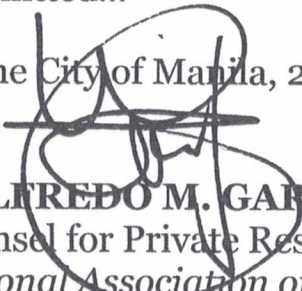
NASECORE’S Position on the Joint Motion

53. To reiterate, the only issue that can be validly raised in this case is: Whether or not public respondent ERC committed grave abuse of discretion in **DENYING** the Joint Motion for Price Adjustment.
54. In this connection, as argued by undersigned counsel during the oral arguments on 11 January 2023, respondent NASECORE is not necessarily hostile to petitioner SPPC’s position.

55. NASECORE's position is qualified: *If no other power generator can offer to supply electricity to MERALCO on terms as good as or better than the terms under the questioned PSA, then NASECORE is in favor of the approval of the Joint Motion for Price Adjustment.* It is the lesser evil. Note that the price increases sought by SPPC, effective for only a period of five months (5) months, are far less than can be had from the open market. The electricity consumers endure increases of Php .3209/kwh to Php 1.4825/kwh compared to the astronomical prices in the open market, including the WESM.
56. SPPC is not bereft of ways to deal with the high fuel costs under the mechanisms available in the SPA. Once the five-month period covered by the Joint Motion expires, from January 2022 to May 2022, petitioner can apply for the next period, again invoking the CIC (change in circumstance) clause and so on, every five or six months also, filing a series of motions with the ERC.
57. Alternately, SPPC can enter into arbitration proceedings with MERALCO as suggested by the ERC in the Assailed Order for a longer, more or less permanent solution – all without breaking the sanctity of contracts, which is unlawful, especially when the same are impressed with public interest.
58. These are “ordinary, speedy, and adequate remedies” available to petitioner short of the issuance of writ of preliminary injunction.
59. The application must be denied.

Respectfully submitted...

Makati City for the City of Manila, 20 January 2023.


WILFREDO M. GARRIDO, JR.
 Counsel for Private Respondent
*National Association of Electricity Consumers
 For Reforms, Inc. (NASECORE)*
 PTR No. MKT 9565281; 01-04-23; Makati
 IBP No. 276313; 01-08-23; Makati
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POBLADOR
BAUTISTA
& REYES

RECEIVED of

By: JETUR / N

Date/Time: 01/10/15

12:00

ENERGY REGULATORY COMMISSION
Exquadra Tower 1, Jade Drive
Ortigas Center, Brgy. San Antonio
Pasig City 1605, Metro Manila

72446905

MANILA ELECTRIC COMPANY (MERALCO)
Meralco Compound, Ortigas Avenue
Barangay Ugong, Pasig City

724476896

EXPLANATION

I HEREBY EXPLAIN that I have furnished respondents Energy Regulatory Commission, Manila Electric Company copies of the foregoing pleading by registered mail, owing to the dearth of messengerial services.


Wilfredo M. Garrido, Jr.

AFFIDAVIT OF SERVICE

I, EDWIN F. JAVIERO, under oath, depose and state:

1. I am the messenger of the law office of Atty. Wilfredo M. Garrido, Jr., with office address at Suite 2157 Herrera Tower, Rufino St. corner Valero St., Salcedo Village, Makati City.

2. I served copies of an Entry of Appearance in CA G.R. SP No. 176036 entitled "South Premiere Power Corp. vs. Energy Regulatory Commission, et al.," pending before the Court of Appeals, Thirteenth Division, on the following parties at their respective addresses and on the dates indicated below:

Name	Mode	Date
POBLADOR BAUTISTA & REYES Counsel for Petitioner South Premiere Power Corp. 5 th Floor, SEDCCO 1 Building 120 Rada corner Legaspi Streets Legaspi Village, Makati City	Personal	19 Jan. 2023
ENERGY REGULATORY COMMISSION Exquadra Tower, 1 Jade Drive cor. Exchange Road Ortigas Center, Pasig City	Registered mail	19 Jan. 2023
MANILA ELECTRIC COMPANY (MERALCO) Meralco Compound, Ortigas Avenue, Pasig City	Registered mail	19 Jan. 2023

either (1) by delivering personally a copy on each of the above persons or duly authorized representative or by leaving a copy of the same at his residence or office, with a person of sufficient age and discretion or (2) by depositing a copy in the post office, in a sealed envelope, plainly addressed to the addressee at his residence or office, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of January 2023 in Makati City, Metro Manila.

JAN 20 2023 EDWIN F. JAVIERO

SUBSCRIBED AND SWORN to before me this 19th day of January 2023 in Makati City, Metro Manila, affiant exhibiting to me his SSS No. 07-1176694-7.

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Book No. 1;
Series of 2023

ATTY. ROLAND E. LAS PIÑAS
Notary Public, City of Manila
Notarial Commission No. 2023/016
Until Dec 31 2024
240-C.A.H. Jacson St., Samp. Mia.
Roll of Attorney No. 84035
PTR No. 0822024/JAN 3, 2023/MLA.
IBP Membership No. 243549 / 06/20/2022
MCLE Exempted G.B.O 1s. 2008