



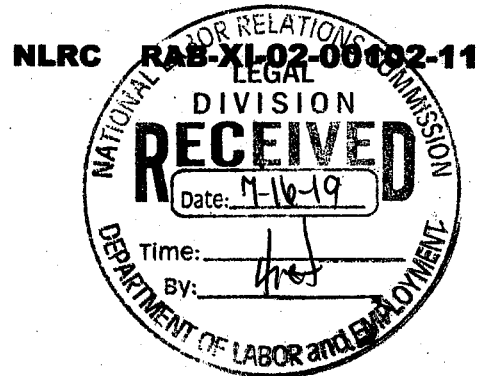
Republic of the Philippines  
Department of Labor and Employment  
**NATIONAL LABOR RELATIONS COMMISSION**  
Regional Arbitration Branch No. XI  
3/F, JLF Parkway Building  
Quirino Avenue-Pichon Street  
Davao City

**DEOCINDA D. BENIGA, ET AL.,**  
Complainants,

- versus -

**LIM FARM/MARCELINO LIM,**  
**ARTHUR LIM, ALBERT LIM,**  
**MYRNA LIM CHUA, ROSITA**  
**LIM SOMBILLA,**  
Respondents,

X-----X



**NOTICE OF LIFTING AND RECALL OF NOTICE OF LEVY**

**T O :**                   **THE REGISTER OF DEEDS**  
                          **Office of the Registry of Deeds**  
                          **Pichon Street corner Bolton Street**  
                          **Davao City**

**G R E E T I N G S :**

IN ACCORDANCE with the ORDER dated 11 June 2019, issued in the above-entitled case by Honorable Franico C. Maskariño, Labor Arbiter, National Labor Relations Commission, Regional Arbitration Branch No. XI, Davao City, copy of which is herewith attached, the NOTICE OF LEVY on the property of respondent MARCELINO A. LIM covered by:

**TRANSFER CERTIFICATE OF TITLE NO. T-47032**  
                          **Book T-236 Page 32**  
                          **Registry of Deeds for Davao City**

is hereby LIFTED AND RECALLED.

PLEASE enter the appropriate annotation on the file copy of the aforementioned title with your Office.

Davao City, Philippines, 24 June 2019.

**FULGENCIO B. LAVAREZ**  
Sheriff II

**COPY FURNISHED:**

**HON. FRANICO C. MASKARIÑO**  
**Labor Arbiter**  
**National Labor Relations Commission**  
**Regional Arbitration Branch No. XI**  
**Davao City**

**LEGAL AND ENFORCEMENT DIVISION**  
**National Labor Relations Commission**  
**National Capital Region**  
**Banawe Avenue corner Florentino Street**  
**Quezon City**

**ATTY. AMADO M. SOLAMO**  
**Counsel for Complainants**  
**Maya-Candelaria Streets**  
**Ecoland, Matina, Davao City**

**LARGO BERNALES-LARGO SEDERIOSA**  
**TUMANDA HERNANDEZ & GUINOMLA**  
**Counsel for Respondents**  
**G/F, District 301-A Lions Foundation Bldg.**  
**Candelaria Street, Ecoland**  
**Davao City**

**MR. MARCELINO LIM**  
**Respondent**  
**Sirib, Calinan, Davao City**

**MR. ALBERT LIM, ET AL.**  
**Respondent**  
**No. 2, Clarin Street**  
**Bo. Obrero, Davao City**



Republic of the Philippines  
Department of Labor and Employment  
**NATIONAL LABOR RELATIONS COMMISSION**

Regional Arbitration Branch XI  
Davao City

NATIONAL LABOR RELATIONS COMMISSION  
REGIONAL ARBITRATION BRANCH NO. XI  
DAVAO CITY

**RELEASED**  
JUN 17 2019  
3-10 fba  
@

DEOCINDA D. BENIGA, JENNIFER A.  
BALANAY, NARDY U. LOPEZ, FELIPE  
I. ACLO, JR., JAKE O. CALAGUIO and  
JEFFREY C. BALANAY,

*Complainants,*

- versus -

NLRC RAB XI-02-00102-11

LIM FARM / MARCELINO LIM,  
ARTHUR LIM, ALBERT LIM,  
MYRNA LIM CHUA, and  
ROSITA LIM SOMBILLA,

*Respondents.*

X ----- X

**ORDER**

Records show that on July 3, 2011, a decision was rendered by then Labor Arbiter Efren B. Cachuela, the dispositive portion reads:

"WHEREFORE, premises considered a judgment is entered DISMISSING the complaint for want of factual and legal basis.

Respondent is directed to pay complainant the sum of Five Thousand Pesos (P5,000.00) each or a total of amount of Thirty Thousand Pesos (P30,000.00) in the spirit of Social Justice.

SO ORDERED."

On Appeal by complainants, a resolution was rendered by the Eighth Division, NLRC (Commission, for brevity) on February 29, 2012, the decretal portion reads:

"WHEREFORE, the assailed decision of 13 July 2011 is REVERSED and SET ASIDE.

Respondents are hereby ordered, jointly and solidarily, to immediately reinstate the complainants to their former positions without loss of seniority rights and other privileges, and to pay their full backwages from date of their dismissal up to their actual reinstatement or in the payroll.

Further, respondents are ordered to pay complainants' salary differentials, 13<sup>th</sup> month pay and service incentive leave pay.

Let the computation of the Fiscal Examiner of this Division form an integral part of the decision.

All other claims are dismissed for lack of factual or legal basis.

SO ORDERED."

Upon motion by complainants, a pre-execution conference was held on Aug. 15, 2013. Only the counsel for complainants bothered to attend. The latter then manifested the need to compute complainants' backwages.

On September 5, 2013, an Order was issued by the undersigned directing the Fiscal Examiner of this office to compute complainants' backwages.

That per Report of Computation dated September 3, 2013 complainants' backwages amounted to a total of P2,127,497.49.

On February 4, 2014, respondents filed a MOTION FOR RECONSIDERATION AD CAUTELAM PETITION FOR RELIEF FROM JUDGMENT with the Commission.

On February 26, 2014, an Order was issued by the Commission directing the undersigned to forward the entire records of the case with dispatch.

On May 13, 2014, a Resolution was rendered by the Commission, the dispositive portion reads:

"ACCORDINGLY, respondents-appellees' Motion for Reconsideration Ad Cautelam Petition for Relief from Judgment is hereby DENIED for lack of merit.

Let the records of this case be remanded back to Labor Arbiter Franico C. Maskariño for the continuation of the execution proceedings.

No further Motions of similar nature shall be entertained.  
SO ORDERED."

On July 2, 2014, an order as issued by the undersigned approving the Report of Computation dated September 3, 2013.

On July 9, 2014, a Writ of Execution was issued in the above-entitled case to enforce the judgment award of complainants in the amount of Two Million One Hundred Twenty Seven Thousand Four Hundred Ninety Seven and 49/100 Pesos (P2,127,497.49)..

However, on May 22, 2015, a Decision on respondents' Petition for Certiorari was rendered by the Twenty-Second Division, Court of Appeals, the dispositive portion reads:

"FOR THESE REASONS, the petition is PARTLY GRANTED. The challenged Resolutions of respondent National Labor Relations Commission in NLRC Case No MAC 01-012388-2012 (RAB 11-02-00102-2011) are MODIFIED. The complaint for illegal dismissal filed by private respondents is DISMISSED. Petitioner is ORDERED to pay private respondents the following:

a)	Deocinda D. Beniga			
	Salary Differentials	-	Php	89,453.84
	13 <sup>th</sup> Month Pay	-		18,571.78
	SILP			<u>3,571.49</u>
			Php	111,597.11
b)	Jennifer A. Balanay			
	Salary Differentials	-	Php	89,453.84
	13 <sup>th</sup> Month Pay	-		18,571.78
	SILP			<u>3,571.49</u>
			Php	111,597.11

c)	Nardy V. Lopez			
	Salary Differentials	-	Php	46,513.74
	13 <sup>th</sup> Month Pay	-		8,589.78
	SILP			<u>1,651.88</u>
			Php	56,755.40
d)	Felipe I. Aclo, Jr.			
	Salary Differentials	-	Php	89,623.74
	13 <sup>th</sup> Month Pay	-		16,752.78
	SILP			<u>3,221.68</u>
			Php	109,598.20
e)	Jake O. Calaguio			
	Salary Differentials	-	Php	98,803.74
	13 <sup>th</sup> Month Pay	-		18,571.78
	SILP			<u>3,571.49</u>
			Php	120,947.01
f)	Jeffrey C. Balanay			
	Salary Differentials	-	Php	59,810.35
	13 <sup>th</sup> Month Pay	-		16,245.04
	SILP			<u>3,124.05</u>
			Php	79,179.44

Petitioners is (sic) further ordered to accept private respondents back to work within five (5) days from notice of this judgment, under the same or substantively similar terms and conditions as his former position prior to his alleged dismissal from the service, without loss of seniority rights. In case reinstatement is no longer feasible due to mutual animosity or strained relationship between him and his employer, the employer should pay private respondents their latest equivalent monthly salary multiplied by the number of years of service as their separation pay in addition to their awarded money claims. Failure of private respondents to report for work within the period stipulated shall be deemed a waiver on their part to continue with their employment which shall justify its termination on the ground of abandonment.

SO ORDERED."

That pursuant to the Writ of Execution dated July 9, 2014, a Notice of Levy dated July 7, 2017 was served by Sheriff Fulgencio B. Lavarez, this Office to The Register of Deeds, Office of the Registry of Deeds, Pichon corner Bolton Street, Davao City, upon the real property of Marcelino A. Lim, as covered by Transfer Certificate of Title No. T-47032, Book T-236, Page 32, Registry of Deeds, Davao City, per Official Receipt No. 1013796961 in the amount of P872.64 as per sheriff's Update Report dated 10 July 2017.

On September 11, 2017, respondents, through counsel filed a Motion for Reconsideration praying that the Writ of Execution dated July 9, 2014 and the Notice of Levy dated May 30, 2017 be declared null and void owing to the above-quoted decision of the Court of Appeals' modifying the Commission's resolution.

Thereafter, a clarificatory hearing was conducted on December 5, 2017 wherein complainants were directed to comment on respondents' motion for reconsideration. Pending submission of the comment by complainants, the undersigned ordered the execution proceedings to be held in abeyance.

In their Comment, complainants, through counsel, argued that respondents' motion for reconsideration is a prohibited pleading under Section 5, Rule V of the NLRC Rules of Procedure and therefore, should be denied. Nevertheless, complainants prayed for the computation of complainants' separation pay considering that reinstatement of complainants was no longer feasible as respondent farm had long ceased operations following the death of respondent Marcelino Lim on October 27, 2012.

Incidentally, while the execution proceeding was still on hold, the Sheriff Lavarez decided to return unsatisfied the Writ of Execution dated July 9, 2014 to the undersigned per his Return of Service dated September 7, 2018 leaving the Notice of Levy on respondent Marcelino Lim's property unlifted or in limbo despite the modification by the Court of Appeals of the Commission's resolution.

Given the foregoing, this Office resolves to grant respondents' motion to declare the Writ of Execution issued on July 9, 2014 as null and void in view of the modification of the resolution of the Commission by the Court of Appeals on May 22, 2015. Consequently, any action taken thereafter by Sheriff Lavarez relative to the enforcement of the questioned Writ was without force and effect. Thus, the undersigned deems it proper to order the return to Sheriff Lavarez his Return of Service so he can do what he is duty-bound to perform under the Rules taking into account the earlier decision of the Court of Appeals.

The complainants' prayer for payment of separation pay in lieu of reinstatement is hereby granted since, as earlier mentioned, respondent farm has already ceased operations. Hence, the computation of the same shall be referred to Ms. Ms. Marielou R. Manreal, Fiscal Examiner of this Office and upon submission thereof to the undersigned, the latter shall decide whether or not to adopt the same as the final computation.

The Return of Service made by Sheriff Fulgencio B. Lavarez to the undersigned dated September 7, 2018 is hereby denied and referred back to him for his appropriate action.

SO ORDERED.

Davao City, Philippines, June 11, 2019.

  
**FRANICO C. MASKARIÑO**  
Labor Arbiter