

**PILIPINAS BANK, COMPLAINANT, VS. JUSTICE SOCORRO
TIRONA-LIWAG, RESPONDENT.***A.M. No. CA-90-11. October 18, 1990*

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/052c48284b7a/>**GUTIERREZ, JR., J.:**

The verified administrative complaint filed by Pilipinas Bank charges respondent Socorro Tirona-Liwag, retired Associate Justice of the Court of Appeals and formerly the Presiding Judge of Branch 143, Regional Trial Court of Makati, with gross ignorance of the law, partiality, serious misconduct and knowingly rendering unjust orders and/or decision relative to Civil Case No. 5260, entitled "Rustica I. Tan, et al. v. Pilipinas Bank", for damages with injunction.

On September 28, 1983, Rustica Tan assisted by her husband Dionisio Tan filed with the Regional Trial Court of Makati a complaint for damages with injunction against petitioner Pilipinas Bank to stop an extra-judicial foreclosure of a lot located at Parañaque, Metro Manila. The complaint prayed among others:

x x x x x x x x

"(c) After trial on the merits, judgment be rendered ordering the defendant; to pay unto the plaintiffs P2,000,000.00 as moral /actual damages, P50,000.00 as exemplary damages and P100,000.00 as attorney's fees, plus costs; (Anne "B", Petition)

x x x x x x x x

The case, docketed as Civil Case No. 5260, was raffled to Branch 143 presided by Judge Zoilo Aguinaldo.

On October 21, 1983, Pilipinas Bank filed a motion to dismiss the complaint with damages but thus was denied by Judge Aguinaldo with damages but this was denied by Judge Aguinaldo in his order dated April 25, 1985. Atty. Rodolfo Vega, the defendant's counsel received a copy of the order denying the motion to dismiss on May 15, 1985.

On July 15, 1985, the plaintiffs filed a motion to declare defendant in default for failure to file an answer within the reglementary period. In the same motion, the plaintiffs asked the court that they be required to submit their evidence ex parte. (Annex "D", Petition)

On July 31, 1985, the Pilipinas Bank filed an "Opposition To Declare Defendant In Default" (Annex "1", Answer). At the same time then, it filed a "Motion To Admit Answer" (Annex "E", Petition) with the answer attached thereto, a copy of which was allegedly furnished to Atty. Lumen Policarpio, the plaintiffs' counsel, (Annex "F", Petition) The defendant alleged that its counsel, Atty. Rodolfo L. Vega had resigned and that there was no one who could prepare the necessary answer since it was Atty. Vega who had full and adequate knowledge of the case; and that it was only recently that the undersigned counsel, Atty. Danilo M. Gutierrez, and the defendant's duly authorized collection representative were able to confer with Atty. Vega about the case and the latter agreed to render assistance in the active and immediate prosecution of the case.

On October 14, 1985, Judge Aguinaldo issued an order declaring the defendant in default; denying the defendant's motion to admit answer and directing the plaintiffs to present their Evidence on October 23, 1985. In the order, Judge Aguinaldo noted that "Atty. Rodolfo L. Vega, the counsel of the defendant, received a copy of the order of the court dated April 25, 1985, denying the defendant's motion to dismiss but Atty. Vega and the defendant did not do anything within the period required by the Rules of Court for the defendant to file its answer. Atty. Rodolfo L. Vega never filed any motion in court asking that he be allowed to withdraw as counsel of the defendant and so even as of this date, he can still be considered the counsel on record of the defendant." (Anne "2", Answer)

On October 23, 1985, the plaintiffs presented their evidence ex-parte pursuant to the default order.

On November 15, 1985, Atty. Godofredo Bernardino filed a notice of appearance as counsel for the plaintiffs in view of Atty. Lumen Policarpio's withdrawal as counsel effective October 8, 1985. (Annex "3", Answer)

On March 6, 1986, the plaintiffs' counsel filed an urgent motion to submit additional evidence which was granted by the court in an order dated March 13, 1986.

On March 14, 1986, the plaintiffs presented additional evidence to establish that the total damages sustained by them on account of the acts of the defendant amounts to P11,474, 554.00.

On August 13, 1986, the defendant filed a motion for reconsideration of the October 14, 1985 order alleging: 1) that it never received a copy of the plaintiffs' motion to declare defendant in default; 2) that it also did not receive a copy of the October 14, 1985 order; and 3) that it was only thru defendant's investigative work that it learned of the foregoing developments. The motion was signed by Atty. Danilo M. Gutierrez as counsel.

On September 10, 1986, Atty. Ramon P. Gutierrez filed an entry of appearance as new counsel of the plaintiffs with the conformity of Rustica Tan. The new counsel then filed an opposition to the defendant's motion for reconsideration to which a reply was filed by the defendant on September 23, 1986.

On October 21, 1986, Judge Aguinaldo issued an order setting aside the default order and admitting the defendant's answer. The order also stated x x x However, the evidence already presented by the plaintiff shall remain as part of the record of this case and the defendant is granted the right to cross-examine the plaintiff Rustica I. Tan whose testimony has already been received."

On August 24, 1987 after the termination of the cross-examination of plaintiff Rustica Tan, the court, now presided by the respondent then Judge Socorro Tirona-Liwag issued an order directing Atty. Rodolfo L. Vega who had reappeared as counsel for the defendant to furnish the counsel for the plaintiffs a copy of the answer within five days. In the same order, the hearing of the case was set on October 7, 1987.

On November 9, 1987, Judge Liwag issued another order stating therein that:

When the case was called for hearing today, counsel for the defendant failed to appear despite due notice. Counsel for the plaintiffs manifested that defendant's counsel has failed up to the present time to furnish him a copy of the answer as directed in the Order of August 24, 1987 and prayed that said answer be stricken off the record; that defendant be declared in default and that plaintiff be allowed to present her last witness in an ex-parte proceedings. The aforesaid verbal motion is submitted for resolution.

In the meantime, let the presentation of evidence in this case be reset to December 15, 1987 at 2:00 o'clock in the afternoon." (Anne "W", Petition)

On December 9, 1987, Atty. Vega, as counsel of the defendant filed a "Manifestation with Motion for Postponement" stating therein that he erroneously sent a copy of the defendant's answer to Atty. Lumen Policarpio, the plaintiffs' former counsel but "x x x is now attaching herewith xerox copy of his Answer to Atty.

Gutierrez, the present counsel actually handling the case for his disposition." Atty. Vega also asked that the case be reset on January 19, 1988.

The hearing was reset to March 16, 1988. Notice was received by the defendant's counsel on February 7, 1986.

On March 16, 1988, however, the defendant's counsel failed to appear during the scheduled hearing. The plaintiffs' counsel manifested that he had not received a copy of the defendant's answer in violation of the order dated August 24, 1987. Upon these grounds, Judge Liwag, in an order of the same date, granted the motion of the plaintiffs submitted during the hearing held on November 9, 1987, and directed that the answer be stricken off the record; declared the defendant in default; and allowed the plaintiffs to present further evidence ex-parte. In the same order; Judge Liwag said:

"After the testimony of plaintiff DIONISIO C. TAN, upon request, plaintiff's counsel is given a period of ten (10) days from today within which to file a Written Formal Offer of Evidence and, from receipt of the resolution thereof, he is given a period of fifteen (15) days within which to file his memorandum. Thereafter, this case is deemed submitted for resolution." (Annex "P", Petition).

Defendant's counsel, Atty. Rodolfo Vega received a copy of the order on April 5, 1988. (Annex "5", Answer)

On April 16, 1988, Atty. Vega filed a motion for reconsideration of the March 16, 1900 order stating that in his manifestation with motion for postponement dated December 8, 1987, he attached therein Annex "A" which is a covering letter dated August 25, 1987 sent to Atty. Lumen Policarpio whom he thought to be still the plaintiff's counsel. Judge Liwag, however, who disputes this allegation, denied the motion on the ground that the records show that the referred Annex "A" is a copy of the answer and not the covering letter to Atty. Policarpio. Furthermore, Atty. Vega submitted that failure to furnish a copy of the answer to the adverse party is not a ground for the declaration of the defendant in default. (Annex "Q", Petition).

On July 14, 1988, Atty. Vega filed a manifestation with supplemental motion for reconsideration reiterating therein that the failure to furnish a copy of the answer to the plaintiffs is not a ground for its declaration in default and the same should not be considered fatal to the cause of the defendant since it had already previously participated in the trial of the case. (Annex "R", Petition)

On November 25, 1988, Judge Liwag issued an order denying the defendant's motions. The order stated:

"As cited for in the aforesaid Rule a defendant who files his answer in court but fails to serve a copy, thereof upon the adverse party may validly be declared in default (Sec. 1, Rule 18, Rules of Court, citing the case of Gonzales v. Francisco, 49 Phil. 747)

Furthermore, the defendant herein was given a considerable length of time within which to correct this defect considering the manifestation of its counsel that the answer was erroneously sent to the wrong counsel (par. 4, Motion for Reconsideration). However, instead of correcting this error, defendant's counsel merely attached a copy of its answer to its Manifestation with Motion for Postponement dated December 8 1987 and the instant Motion for Reconsideration as annexes thereto, without any showing that copy of the same answer was actually received by plaintiff's counsel.'

As a matter of fact, the motions under consideration do not contain any specific allegation concerning service of the aforesaid answer upon the plaintiff's counsel and merely insisted that non-service of defendant's answer to plaintiff is not a ground for declaring defendant in default (par. 3, Supplemental Motion for Reconsideration)." (Annex "S", Petition).

The defendant's, counsel received a copy of this order on December 21, 1988.

On September 14, 1989, Atty. Vega filed a manifestation and motion stating therein that a similar case covering

the property, subject matter of the case was filed by plaintiff Rustica Tan against the defendant with the Regional Trial Court of Batangas which has already been decided and was in fact already sold in an auction sale making the case moot and academic and it should be dismissed on the ground of "res judicata."

On September 18, 1989, Judge Liwag denied the motion stating that the defendant has not regained its standing in court since the said defendant has not applied for the lifting of the default order. The manifestation and motion was ordered expunged from and/or stricken off the records of the case. (Annex "7", Answer)

On September 21, 1989, Judge Liwag rendered a decision in favor of the plaintiffs. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against the defendant, making the injunction heretofore issued PERMANENT and declaring the foreclosure and resultant sale of plaintiffs' property situated at Bo. La Huerta, Parañaque, Metro Manila, covered by Transfer Certificate of Title No. S-90717 of the Registry of Deeds of Pasay City, NULL and VOID, and of no force and effect whatsoever.

Further, defendant is ordered -

1. To pay plaintiff the sum of P13,574,554.00 for and as actual or compensatory damages;
2. To pay plaintiff the sum of P500,000.00 as moral damages and the further sum of P300,000.00 as exemplary damages;
3. To pay the sum of P100,000.00 as and for attorney's fees; and
4. To pay the costs of suit.

However, since the awarded damages to plaintiffs exceed the claim in the Complaint, the filing fees corresponding to the increased award shall constitute a first lien on the judgment award and no payment by execution or otherwise may be made to the plaintiffs without first paying the amount of such filing fees to the Clerk of Court." (Annex "T", Petition)

On September 29, 1989, the plaintiffs filed a motion for execution pending appeal (Annex "U", Petition). An opposition to the motion was filed by the defendant.

On October 6, 1989, Atty. Vega for the defendant filed a motion for new trial to which the plaintiffs filed an opposition.

On October 10, 1989, after hearing, Judge Liwag granted the motion for execution pending appeal based on "good reasons" cited therein and upon posting of the corresponding bond in the amount of the total judgment award of P14,474,554.00.

On October 17, 1989, the plaintiffs filed a consolidated motion to strike and motion for the issuance of a writ of execution.

On October 26, 1989, Judge Liwag resolved the aforesaid motions. She granted the plaintiffs' consolidated motions and ordered the defendant's motion for new trial stricken off the records. Judge Liwag also issued a writ of execution to enforce the decision.

The writ of execution was, however, not enforced in view of the restraining order issued by the Court of Appeals on October 31, 1989. The restraining order was issued in the petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order filed by complainant Pilipinas Bank questioning the decision of Judge Liwag in Civil Case No. 5260.

On July 9, 1990, the Court of Appeals rendered a decision granting the petition. The decision dated September 21, 1989 in Civil Case No. 5260 was set aside and annulled and the case ordered remanded to the court of origin for trial on the merits. Moreover, the writ of preliminary injunction issued on November 24, 1989 was made permanent.

The Tan spouses, then filed before us a petition for certiorari to review the appellate court's decision.

In a resolution dated September 5, 1990, we denied the petition for failure of the petitioners to sufficiently show that, the respondent court had committed any reversible error in its questioned judgment.

The complainant bank asks for the application of the *res ipsa loquitur* doctrine. It states that the orders and decision of the respondent speak for themselves in the light of the surrounding circumstances and that former Justice Liwag should be disciplined accordingly.

The complainant centers its charges on the judgment by default and the award of exorbitant damages much greater than the prayer in the complaint. Partiality, serious misconduct, and rendering of unjust orders are charged because of the denial by Judge Liwag of all attempts by the bank to regain its standing in court.

The complainant points out that the former Judge had already set aside the default order and admitted the answer which formed part of the records of the case. It was not, therefore, proper for Judge Liwag to again declare the bank in default simply because a copy of the answer was not served on the plaintiffs' counsel.

The respondent states that the former Judge properly declared the bank in default on October 14, 1985. She explains that this order was reconsidered on October 21, 1986 through a misrepresentation by the bank's counsel. The bank had argued on August 13, 1985 that it had never received a copy of the plaintiffs' "Motion to Declare Defendant in Default." The truth is that earlier on July 31, 1985, the bank had already filed its apposition to the motion to declare it in default.

The reconsideration of the order of default allowed the plaintiffs' evidence to remain in the records but gave the bank the right to cross-examine the witnesses whose evidence had been received.

On November 7, 1986, Atty. Vega who had supposedly withdrawn from the case reappeared and asked to cross-examine Tan. The cross-examination was scheduled for December 12, 1986. Because of various incidents, it was not until August 24, 1987 that Tan was cross-examined. The bank's counsel did not show up on November 9, 1987 during another scheduled hearing.

At this point, the plaintiffs' counsel stated that the order to furnish him with a copy of the answer had not been obeyed. He moved to have the answer stricken off, to have the defendant declared in default, and to present his last witness in ex-parte proceedings.

The case was reset to December 9, 1987. The bank's counsel asked for a postponement during this hearing. He also alleged that he had erroneously given the copy of the answer to the Tan's former counsel and was now furnishing a copy to the present counsel.

The hearings were reset to March 16, 1988. On this date, the bank's counsel again failed to show up. The counsel of the Tans informed the court that while he received a copy of the bank's manifestation, there was no copy of an answer attached to it.

Obviously fed up with the improper tactics of the defendant bank and its lawyers, Judge Liwag granted the plaintiffs motion. The answer earlier admitted by Judge Aguinaldo was stricken off the record; the defendant bank was declared in default; and the plaintiff was allowed to present further evidence ex-parte.

Insofar as the default order is concerned, we see no partiality, serious misconduct, or rendering of unjust order in its promulgation. The situation could have been better handled and a more correct order issued with the same effect as a blanket grant of a motion to declare defendant in default. However, we see no basis for imposing disciplinary measures on this score alone.

The complaint was filed on September 28, 1983. As late as March 16, 1988, the bank had not complied with the elementary requirement of filing the answer on time and properly and with sincerity and candor furnishing the plaintiffs' counsel with a copy.

As early as August 21, 1984, the plaintiffs had already moved to declare the bank's counsel, Atty. Rodolfo Vega in contempt for violating the court's order of injunction. Vega's answer was that his motion to dismiss had not been resolved yet. In spite of the injunction, the disputed property was extra-judicially foreclosed and sold.

The respondent Judge had reason to believe that the justification given for the bank's opposition to the motion to declare defendant in default was less than candid. It was alleged that Atty. Rodolfo L. Vega had recently resigned as counsel and had not been replaced. Yet, this same Atty. Vega would later resurface in full control of all the bank's moves and pleadings. The bank's counsel "Attorneys Vega, Gutierrez, Fernandez, and Associates" had not withdrawn their appearance was Atty. Danilo M. Gutierrez.

It was also Judge Liwag's finding that her predecessor lifted the default order because of a misrepresentation by the bank's counsel. The behaviour of the bank's counsel in subsequent proceedings and the long delay in the resolution of the case eventually led to the questioned judgment.

The second ground for the charges against former Justice Liwag lies in the award of P14,474,554.00 for actual compensatory, moral, and exemplary damages, and attorney's fees when the prayer in the complaint was for only P2,150,000.00.

This is a more serious charge because the big award was the result of default proceedings.

It was error on the part of Judge Liwag to award damages more than what was prayed for in the complaint. As cited by the appellate court, Section 5, Rule 18 of the Rules of Court is very explicit in that a judgment against the party in default shall not exceed the amount or be different in kind from that prayed for.

These errors, notwithstanding, we find no merit in the complainant's submission that the principle of *res ipsa loquitur* which was our basis in disciplining errant Judges should be applicable in the instant case. (See *People v. Valenzuela*, 135 SCRA 712 [1985]; *Cathay Pacific Airways, Ltd. v. Romillo, Jr.*, 142 SCRA 262 [1986]; *Prudential Bank v. Castro*, 142 SCRA 223 [1986]; and *Consolidated Bank and Trust Corporation v. Capistrano*, 159 SCRA 47 [1988]):

"In these *res ipsa loquitur* resolutions, there was on the face of the assailed decisions, an inexplicable grave error bereft of any redeeming feature, a patent railroading of a case to bring about an unjust decision, or a manifestly deliberate intent to wreak an injustice against a hapless party. The facts themselves, previously proven or admitted, were of such a character as to give rise to a strong inference that evil intent was present. Such intent, in short, was clearly deducible from what was already of record. The *res ipsa loquitur* doctrine does not except or dispense with the necessity of proving the facts on which the inference of evil intent is based. It merely expresses the clearly sound and reasonable conclusion that when such facts are admitted or are already shown by the record, and no credible explanation that would negative the strong inference of evil intent is forthcoming, no further hearing to establish them to support a judgment as to the culpability of a respondent is necessary.

Thus, when asked to explain the clearly gross ignorance of law or the grave misconduct irresistibly reflecting

on their integrity, the respondent Judges were completely unable to give any credible explanation or to raise reasonable doubt, which have justified a more lenient judgment of their conduct" (In Re: Petition for Dismissal from Service and/or Disbarment of Judge Baltazar Dizon, 173 SCRA 719)

The facts of this case negate any improper or evil motive and malice on the part of Judge Liwag in issuing the orders as well as the decision in Civil Case No. 5260.

First, the record clearly shows that Judge Liwag never issued the orders in deliberate haste to railroad the case in favor of the plaintiffs and to the prejudice of the defendant, the complainant bank herein. The complainant's counsel was given all the opportunities to traverse the motions. Judge Liwag scheduled and re-scheduled the hearings of the case. However, Atty. Rodolfo L. Vega, counsel of the complainant bank was always absent during the scheduled hearings. Despite notice In fact, it was only after more than eight months from receipt of the November 25, 1988 order, which denied the complainant's motion for reconsideration of the orders declaring the complainant in default, specifically on September 14, 1989, when Atty. Vega filed a manifestation and motion alleging that the case had become moot and academic and should be dismissed on the ground of *res judicata*.

Second, the orders were issued after deliberation and consideration of all pleadings filed by the parties. The orders were not issued without rhyme or reason. The orders clearly reveal all the antecedent facts as regards the subject matter of the orders and the justifications for such orders. Judge Liwag issued the questioned orders in apparent good faith without any proof or showing of malice, corrupt motives or improper consideration. In the case of *Consolidated Bank and Trust. Corporation v. Capistrano*, *supra*, we ruled that:

"x x x [G]ood faith and absence of malice, corrupt motives or improper consideration are sufficient defenses protecting a judicial officer charged with, ignorance of the law and promulgation of an unjust decision from being held accountable for errors of judgment, on the premise that no one called upon to try the facts or interpret the law in the administration of justice can be infallible. The respondent Judge's claim of belief in the legal soundness of his orders would have been more plausible were it not for his perceptibly persistent refusal, despite the opportunity afforded by several occasions, to hear the merits of the defenses of complainant Solidbank and its co-defendants in their motions to dismiss and answer, and the grossly excessive and unconscionable amounts of damages he adjudged against said defendants despite their preclusion from any participation in the trial." (at p. 56)

As regards the award of more than the amount prayed for in the complaint, the record discloses that in the order dated October 21, 1986, wherein Judge Aguinaldo lifted the order of default against the complainant bank, it was specifically stated therein that "x x x the evidence presented by the plaintiff shall remain part of the records of this case and the defendant is granted the right to cross-examine the plaintiff Rustica Tan whose testimony has already been received." Earlier, on March 14, 1986, the plaintiffs presented evidence to establish that the total damages sustained by them on account of the acts of the complainant amounted to P11,474,554.00. The claim was supported by both testimonial and documentary evidence. When the default order was lifted, the complaint was given the chance to cross-examine Rustica Tan on August 24, 1987. However, the defendant's counsel in the course of his cross-examination did not question the amount of damages which was more than what the complaint prayed for as testified by Rustica Tan. The evidence was allowed to stay in the records since the defendant did not file any motion to strike off that portion of the plaintiffs' evidence. It was not, therefore, the usual judgment by default because the bank was allowed to and, in fact, did cross-examine the plaintiffs' witness. Judge Liwag explains:

"The respondent felt that Section 5, Rule 18 of the Rules of Court, did not apply to the situation where the parties found themselves, after considering all the proceedings that transpired before the then Judge Zoilo Aguinaldo and before the respondent herself. Her perception of the said section viewed in relation with Section 1 of the same Rule is that it applies only to the ordinary defaulting defendant - a defendant who received

summons and thereafter failed or refused to answer, allowing the claimant/plaintiff to take a default judgment against him, confident that nothing can be recovered against him except those prayed in the complaint. The situation is simple and the proceedings required is uncomplicated and relatively easy. Sections 1 and 5 of Rule 18 of the Rules of Court unmistakably apply.

What transpired, however, in this case, presented several difficult situations, the treatment of which, she believed, would be inadequate if Section 5, Rule 18 is made. to apply in all its simplicity. Regrettably, it is now this failure to take the path of least, resistance that brings her to this sorry affair." (Rollo, p. 197)

Third, the complainant bank itself appears to have entertained some doubts that Judge Liwag may have had reasons under the circumstances in issuing the questioned orders because it filed with the Regional Trial Court of Manila a complaint against its then counsel, Atty. Rodolfo L. Vega for damages as regards his lapses in Civil Case No. 5260. The complaint states:

x x x x x x x x

"8. That in the aforesaid Civil Case No. 5260 entitled 'Rustica L. Tan v. Pilipinas Bank', defendant Rodolfo L. Vega appeared as counsel for Pilipinas Bank.

9. That defendant was grossly negligent in handling the case when:

a. He failed to file an Answer to the Complaint despite lapse of two (2) months and sixteen (16) days from the reglementary period;

b. After having moved for reconsideration, defendant Vega failed to attend the hearings of Civil Case No. 5260 and did not furnish Rustica Tan's counsel a copy of the Answer resulting in plaintiff Pilipinas Bank being declared in default, and Rustica Tan presenting evidence ex-parte, a photocopy of said Order is herewith attached, and made integral part hereof and marked Annex "C".

"10. Notwithstanding the default order and the denial of defendant Vega's motion for reconsideration, defendants did nothing to protect the rights and interests of plaintiff Bank. Defendants did not even bother to inform plaintiff of the default order and the case status. (Complaint, Annex "4", p. 3)

We view the orders of Judge Liwag in 'he light of the bank's exasperation with its own counsels

To get a fuller view of the circumstances of this complaint and ascertain whether the writ of execution (which, incidentally, was never implemented because of Court of Appeal's action) may have been a "midnight" decision, we directed the Court Administrator to look into this aspect of the case.

Judge Liwag learned of her appointment to the Court of Appeals on October 23, 1989. In an effort to clear her desk of pending case, she acted on this following:

"1) Research and Service Realty, Inc. v. Elsa Isidro - CC #10895

2) PCIB v. Pick-Up Fresh Farms, Inc. - CC #15144

3) Intercity v. Chiongbian - CC #88-07

4) Guanson v. Chartered Construction - CC #14355

5) People v. Loreta Go - Crim. Cases #7902--7904

6) Custodio v. Liwanag-Buan - CC #16880

7) Normita Pine v. Esteban Fine - CC #88-763

8) PCIB v. Lino CC # 18762

9) In re Marco Condes - Sp- Proc. #M-12185

10) Tan v. Pilipinas Bank - CC #5260." (Rollo, p. 200)

The order granting the motion for execution pending appeal was issued on October 10, 1989. The order to strike off the motion for new trial and to issue a writ of execution was promulgated on October 26, 1989.

The Branch Clerk of Court issued the writ itself on October 27, 1989. Judge Liwag took her oath of office as Justice of the Court, of Appeals on October 30, 1989. The complainant's case does not appear to have been singled out for exclusive action and neither was the execution granted "a few hours" before Judge Liwag took her oath of office. We accord to her the presumption of duty having been performed in a regular manner.

And finally, former Justice Liwag states it is what she considered her best efforts are found wanting by the Supreme Court then she tenders her incorrect apologies for the lapses or errors she might have committed and assures us that they were not done with malice or intent to cause injustice to anyone.

The Court finds the complaint for gross ignorance of the law, partiality, serious misconduct, and knowingly rendering unjust orders and decision unsubstantiated and without sufficient basis. However, the Court also finds that Judge Liwag should have acted in a more professionally competent manner to obviate the appearance or suspicion of misconduct in the issuance of orders awarding huge sums of money against defaulting or recalcitrant parties. If she were still on the bench, she would have been reprimanded and warned to be more careful in the scrupulous observance of the rules. Since she has retired, the above observations suffice.

WHEREFORE, the Court hereby clears former Appellate Justice Socorro Tirona-Liwag of the charges filed against her and orders the complaint DISMISSED.

SO ORDERED.

Fernan, C.J., Narvasa, Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, J., see separate opinion.

Feleciano, J., on leave.

Pilipinas Bank vs Tirona-Liwag : CA-90-11 : October 18, 1990 : J. Melencio-Herrera : En Banc : Separate Opinion Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

Separate Opinion

MELENCIO-HERRERA, J.:

I agree that the complaint should be dismissed.

It is my opinion, however, that neither a reprimand nor warning, which are administrative penalties, are called for, even if respondent were still in the Bench.

There were two Orders of default. The first, rendered by another Judge, had been lifted and evidence was presented to establish the total damages sustained by the adverse party, to which the bank made no objection (Decision, p. 18). This evidence was specifically allowed to remain in the records (ibid.). The second Order of

default was issued by respondent Judge. It was not without basis because the bank had failed to serve a copy of its Answer upon the adverse party (Gonzales v. Francisco, 49 Phil. 747 [1926]). The award of damages eventually made by respondent Judge was based on the evidence previously presented. Indeed, the "default judgment" was an unusual one (ibid.), in the sense that, although the bank had been declared in default, evidence as to the total damages sustained by the adverse party attributable to its acts had been adduced, which accounts for an award greater than that prayed for in the complaint.

If at all, therefore, under the peculiar circumstances of the case, what is involved is an error of judgment for which a Judge should not be held administratively liable. The decision was also admittedly rendered in good faith (ibid., pp. 16, 17) and the settled rule is that a Judge cannot be held to account civilly, criminally or administratively for an erroneous decision rendered in good faith (In Re: Petition for the dismissal from Service and/or Disbarment of Judge Baltazar R. Dizon, 173 SCRA 719 [1989]; Consolidated Bank and Trust Corporation v. Capistrano, 59 SCRA 47 [1988]).

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It is my opinion, however, that neither a reprimand nor warning, which are administrative penalties, are called for, even if respondent were still in Bench.

There were two orders of default. The first, rendered by another Judge, had been lifted and evidence was presented to establish the total damages sustained by the adverse party, to which the bank made no objection (Decision, p. 18). This evidence was specifically allowed to remain in the records (ibid.). The second order of default was issued by respondent Judge. It was not without basis because the bank had failed to serve a copy of its Answer upon the adverse party (Gonzales v. Francisco, 49 Phil. 747 [1926]). The award of damages eventually made by respondent Judge was based on the evidence previously presented. Indeed, the "default judgment" was an unusual one (ibid.), in the sense that, although the bank had been declared in default, evidence as to the total damages sustained by the adverse party attributable to its acts had been adduced, which accounts for an award greater than that prayed for in the complaint.

If at all, therefore, under the peculiar circumstances of the case, what is involved is an error of judgment for which a Judge should not be held administratively liable. The decision was also admittedly rendered in good faith (ibid., pp. 16, 17) and the settled rule is that a Judge cannot be held to account civilly, criminally or administratively for an erroneous decision rendered in good faith (In Re: Petition for the dismissal from Service and/or Disbarment of Judge Baltazar R. Dizon, 173 SCRA 719 [1989]; Consolidated Bank and Trust Corporation v. Capistrano, 59 SCRA 47 [1988]).

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