

**EDGARDO D. BALSAMO, SENIOR MANAGER, BANK OF THE
PHILIPPINE ISLANDS, COMPLAINANT, VS. JUDGE PEDRO L. SUAN,
RTC, BRANCH 15, OZAMIS CITY, RESPONDENT.**

A.M. No. RTJ-01-1656 (Formerly AM OCA IPI No. 01-1177-RTJ). September 17, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On October 23, 2000, the Office of the Court Administrator (OCA) received a sworn complaint from Edgardo Balsamo, Senior Manager, Bank of the Philippine Islands (BPI) dated October 13, 2000 charging Hon. Pedro L. Suan,[1] Presiding Judge of the Regional Trial Court, 10[th] Judicial Region, Ozamis City, Branch 15 with –

- APPARENT BIASNESS AND PARTIALITY IN FAVOR OF A PARTY;
- INDISCRIMINATE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION AMOUNTING TO IGNORANCE OF THE LAW;
- GRAVE MISCONDUCT, INEFFICIENCY AND INCOMPETENCE;
- FAILURE TO DECIDE AND RESOLVE AN INCIDENT PENDING RESOLUTION WITHIN THE PERIOD PROVIDED FOR IN ADMINISTRATIVE CIRCULAR NOS. 4 AND 3-99 OF THE SUPREME COURT (sic) IN CONJUNCTION WITH ARTICLE VIII, SECTION 15 OF THE CONSTITUTION;
- FOR GROSS IGNORANCE OF THE LAW.[2]

The complainant prayed that after due proceedings, judgment be rendered, thus:

WHEREFORE, premises considered, it is prayed of the Honorable Investigating Justice that the Respondent be found guilty of the specifications in Charge No. 1 and Charge No. 2, in that he manifested partiality, favoritism and biasness in handling the cases under his Sala, as well as in displaying inefficiency, negligence, grave misconduct and of ignorance of the law and rules in the issuance of the TROs and Writs of Preliminary Injunction, in the non-calling for pre-trial the cases and of not dismissing the main cases in the above-mentioned five (5) civil cases, as duly proven and established by evidence for the complainant, and to be sentenced accordingly under existing jurisprudence involving the behavior and conduct of Judges in the way the cases before their Salas are being treated upon.[3]

The Court, in a Resolution dated September 3, 2001, assigned the case to Court of Appeals Associate Justice Jose L. Sabio, Jr. for investigation, report and recommendation.[4]

The charges against the respondent judge arose relative to five civil cases with then pending incidents before his sala, instituted by some borrowers/debtors of the complainant to enjoin the latter from foreclosing the real estate mortgages on their respective loans.

THE COMPLAINT

I. Civil Case No. OZC-98-39

Geege Megamall, Inc. v. Bank of the Philippine Islands (BPI)

The respondent judge issued an Order dated September 1, 1998, stating that he saw no urgency to issue the temporary restraining order (TRO) prayed for and set the case for hearing with respect to the writ of preliminary injunction.[5] The plaintiff did not file a motion for reconsideration. BPI thereafter instituted foreclosure proceedings against the plaintiff on September 15, 1998. However, on September 30, 1998, respondent judge motu proprio issued a TRO enjoining BPI from proceeding with the foreclosure.[6] On October 21, 1998, after due hearing, the respondent judge issued a writ of preliminary injunction with a bond of P1,000,000.[7] According to the complainant, the bond required by the respondent judge was an amount disproportionate to the damages being claimed by BPI.[8]

The order granting the writ of preliminary injunction was challenged by the complainant in a petition for certiorari with the Court of Appeals, but the latter sustained the said order. The complainant elevated the matter to this Court, but the said petition for review was dismissed due to late filing.[9]

According to the complainant, the respondent judge showed bias and partiality when he issued a TRO motu proprio in favor of the plaintiffs after denying an earlier application for the same on September 1, 2000. The plaintiff did not even file a motion for reconsideration of the said order.[10]

The respondent, without hearing BPI's motion to dismiss, issued an Order dated August 22, 2001, motu proprio setting the case for pre-trial. According to the complainant, it was not the duty of the court to set the case for pre-trial, but devolved upon the plaintiff as provided for by the Rules. It was also pointed out that at the time the notice for pre-trial was issued by the court, the plaintiff had not yet filed a motion to the effect. The motion was filed only two days after the court issued the notice of pre-trial.

. . . We invite the Honorable Investigating Justice to peruse and scan EXH. "G", to see for himself how confusing is this Order concerning the dates the Order is based upon, to show the inefficiency, negligence and ignorance of the Respondent, (TSN pp. 28-32, Brimon). Then on September 12, 2001, respondent issued an Order (EXH. "H"; "H-1") denying the Motion to Dismiss, pre-empting that six (6) months is not an unreasonable length of time during which plaintiff failed to move and set the case for pre-trial. Showing that Respondent was fully unaware and ignorant of the existence of Adm. Circular No. 3-99 effective January 5, 1999. (TSN pp. 34-35, Brimon). These Exhibits E to H-1 were admitted by respondent as to [their] existence (TSN pp. 35-36).[11]

In answer, the respondent contended that -

- (1) The Pre-Trial stage has become moot and academic because practically all the issues and matter appropriate subjects for a Pre-Trial have been ventilated and clarified during the hearing of the application for a Writ of Preliminary Injunction.
- (2) Complainant's Motion to Dismiss is a misplaced pleading since under Rule 16 of the Rules of Court, a Motion to Dismiss shall be filed within the time for but before filing the answer to the Complaint. Failure to move to set the case for Pre-Trial is not among the grounds enumerated in Rule 16.
- (3) Under Rule 33, Rules of Court, a Motion to Dismiss may be presented after the Plaintiff has completed the presentation of his evidence on the ground that upon the facts and the law, the Plaintiff has shown no right to relief.
- (4) That Section 1, Rule 18 of the Rules of Court is remedial law and must be construed liberally to promote

and not frustrate justice. That the court render its residual inherent authority and jurisdiction to determine the rights of a party in an action and to resolve their controversy, on its own motion may set the case for Pre-Trial to consider the possibility of an amicable settlement.[12]

II. Civil Case No. OZC-98-46

Spouses Nelson Lee and Noemi Lee v. BPI and the City Sheriff of Ozamis City

On September 15, 1998, BPI instituted proceedings for Extra-Judicial Foreclosure of Mortgage against the plaintiffs for the latter's failure to pay their obligation. The plaintiffs thereafter instituted the action for damages with a prayer for a writ of preliminary injunction and/or TRO. The respondent judge issued the TRO prayed for. During the hearing on the propriety of the issuance of the writ, the plaintiffs admitted their inability to pay their obligations to the bank. Despite this admission, the expiration of the TRO, and the fact that the principal obligation had already matured, the respondent judge still issued the writ of preliminary injunction enjoining BPI from proceeding with the foreclosure sale.[13]

According to the complainant, the respondent judge's manifest bias and ignorance of the law were shown when he made a pronouncement in open court: "in case the application for restructuring of the plaintiff's loan be denied, the same can be appealed to the Central Bank which has the final say on the matter." [14] The complainant also alleged that the requirements for the issuance of a temporary restraining order laid down in Rule 58, Section 4(d) of the Revised Rules of Court, as amended [15] were not followed in the instant case. [16] Thus, according to the complainant, the respondent judge made a mockery of the procedural law by ignoring the Rules. The respondent also violated Section 5 of Rule 58 of the Revised Rules of Court, as amended, [17] since the latter issued a TRO ex parte, without the required subsequent service of summons and other documents on the defendants. The TRO, which was effective for twenty days, was issued on the day the amended complaint was filed and before BPI could commence foreclosure proceedings. [18]

The complainant challenged the TRO issued by the respondent judge via a petition for certiorari before the Court of Appeals, docketed as CA-G.R. No. 54537-SP. The records of the case were elevated to the appellate court on January 17, 2000. The case has not yet been resolved by the former 12th Division of the CA. [19]

III. Civil Case No. OZC-98-47

Philippine Compak Board, Inc. v. BPI and Ex-Officio Sheriff Lolita Lomanta and Rosal Begay

The plaintiffs filed the complaint on October 10, 1998, praying for the issuance of a writ of preliminary injunction and/or TRO to enjoin the complainant from foreclosing the real estate mortgage as the said plaintiff failed to pay its obligation which, as of September 18, 1998, already amounted to P21,671,905.94. The respondent judge issued the TRO prayed for on October 14, 1998, which was to expire on November 3, 1998. The complainant contends that the respondent in so doing violated Rule 58 of the Revised Rules of Court, as amended, since the said order was issued without required notice to the defendants. [20]

On January 26, 1999, the complainant filed a motion to allow them to proceed with the foreclosure proceedings due to the plaintiff's huge overdue account. The respondent judge did not act on the said motion despite the fact that there was no legal impediment because the TRO had by then already expired.

On December 5, 1999, or after one year and two months from the expiration of the said TRO, the respondent judge issued the writ of injunction against the complainant, requiring a bond in the amount of only P200,000. The said order was challenged via a petition for certiorari before the CA, which in turn annulled and set aside the questioned order. After the motion for reconsideration was denied, the plaintiffs elevated the case to this Court. We sustained the decision [21] of the CA in a Resolution dated June 18, 2001.

IV. Civil Case No. OZC-98-48

Eugene Lim v. BPI Agricultural Development Bank and Ex-Officio Sheriff Lolita L. Lomanta

The respondent judge issued a TRO in favor of the plaintiff who was indebted to BPI in the amount of P13,037,146.98 as of January 12, 1999. The complainant alleged that the respondent judge failed to take any action on their "Motion to Allow Defendant to Proceed with the Foreclosure Proceedings" for a period of more than one year. The respondent judge issued an Order dated March 13, 2000 for the issuance of a writ of preliminary injunction upon the posting of a bond in the sum of P200,000 only, to include Cases Nos. OZC-98-48, 98-49 and 98-47. It was further averred that the respondent judge must have falsified his certificate of service if he certified that he had no pending motions for resolution of the court beyond the period allowed by law.

The present case is now the subject of a petition for certiorari under Rule 65, but according to the complainant, "the clock of the main case has stopped," and pre-trial has not as yet been scheduled.[22]

V. Civil Case No. OZC-98-49

Eugene Lim v. BPI and Sheriff Lomanta

The respondent judge was also accused of not acting on the motion to allow the defendants to proceed with the foreclosure proceedings for more than a year. He also issued orders that were not in accord with the law and the Rules, i.e., issuing an order granting a writ of preliminary injunction for three distinct cases, and which cases were not joined nor even consolidated. The complainant pointed out that the loans involved in the three cases amounted to P38,500,000, but the respondent required a bond of merely P200,000.[23]

In his Comment, the respondent judge alleged that "the complaint is a pure harassment, and has no basis in fact and law." [24] The respondent judge denied all the charges hurled against him. In refuting the allegations of bias and favoritism, he asserted that when the complainant filed a motion to inhibit him from hearing and trying the cases, he granted the motion to dispel any doubts of partiality. This Court, however, reversed such order and directed him to continue to hear and decide the cases.

THE FINDINGS OF THE INVESTIGATING JUSTICE

In his Report dated August 6, 2002, Investigating Justice Sabio found that the respondent judge, by his actuations, manifested "bias and favoritism" in favor of particular parties in cases before his sala. In Civil Case No. OZC-98-39, the manner the Rules were misused and misapplied to favor the plaintiff therein readily showed this. Thus,

... But what is more glaring is that Respondent instead of acting on Complainant's Motion to Dismiss filed pursuant to Section 3 of Rule 17 of the Rules of Court and filed much earlier, issued an Order dated August 22, 2001 allegedly setting the case for pre-trial on an alleged Motion of Plaintiffs which was not in existence as of August 17, 2001 or the day the Motion to Dismiss was filed.[25]

In Civil Cases Nos. OZC-98-46 and OZC-98-47, the matter of the issuance of a TRO and a writ of preliminary injunction, respectively, were brought on certiorari and are at present pending before the CA. The Investigating Justice opined that it would not be prudent to make any findings or recommendations as to the actuations of the respondent in the said cases.[26] As for the two other cases, the Investigating Justice had this to say:

III. Civil Case No. OZC-98-47...

Respondent was found by the Court of Appeals to have acted with grave abuse of discretion in issuing a Writ of Preliminary Injunction against Complainant who had a clear right in favor of Plaintiffs, who has no clear and established right.

Worse, Respondent enjoined the satisfaction of a P21 Million matured loan on a bond of P200,000.00 only. Additionally, the Writ of Injunction was issued after a lapse of more than one (1) year from the hearing of the same.

...

IV. Civil Case No. OZC-98-49 ...

The bias and prejudice of Respondent against Complainant has been manifested in this wise:

(1) He caused the issuance of a Writ of Preliminary Injunction against Complainant after more than one (1) year from the date of hearing of the same, while on the other hand, he did not act on Complainant's Motion to Allow it to proceed with foreclosure proceedings filed one (1) year earlier.

(2) He issued the writ conditioned only on a P200,000.00 bond which covered other obligations to the tune of P38,500,000.00.[27]

According to the Report, while the respondent's favoritism and bias in favor of a party in the cases before his sala was rather apparent, there was nothing to indicate that he was compelled to act in such manner because of bad faith, malice, corruption or intent to do injustice. It was recommended that the respondent be fined only a minimal amount.[28]

On the charge of gross ignorance of the law, the Investigating Justice ruled as follows:

To be held liable for gross ignorance of the law, the judge must be shown to have committed an error that was "gross or patent, deliberate and malicious (Zarate vs. Balderian, 329 SCRA 558). Such is not the case of Respondent.

However, it can be safely said that Respondent has erroneously interpreted the rules to favor Plaintiff as against Complainant. But again, since there is no showing that he acted in bad faith or with deliberate intent to do an injustice (Rallos vs. Gako, Jr., 328 SCRA 324) he should only be imposed a fine, in addition to an admonition.[29]

The Investigating Justice also brought to the Court's attention the following incidents that occurred during the pendency of the case:

- On September 21, 2001, the Complainant filed a Motion to Inhibit with Respondent which the latter granted per his Order dated September 25, 2001.

However, the Court, thru its Second Division, in a Resolution dated February 4, 2002, noted and set aside the Order of Inhibition and directed the Respondents to continue to hear and decide the five (5) cases.

- Respondent [judge] has already retired as of May 2002.[30]

THE RULING OF THE COURT

We agree with the findings of the Investigating Justice.

Rule 3.05 of the Code of Judicial Conduct requires judges to dispose of the court's business promptly and to act, one way or the other, on cases pending before him within the prescribed period therefore.[31] The Investigating Justice found that in Civil Cases Nos. OZC-98-47, OZC-98-48 and OZC-98-49, the writs of preliminary injunction were granted or issued one year after the last date of hearing. Furthermore, the respondent failed to act on pending motions, and in certain instances waited for at least a year to resolve the same. Undue delay in resolving a pending motion constitutes gross inefficiency.[32] This cannot be countenanced at a time when the

clogging of the court dockets is still the bane of the judiciary. Judges are expected to observe utmost diligence and dedication in the performance of their judicial functions and the discharge of their duties.[33] Delay in the disposition of cases erodes the faith and confidence of the public in the institution of justice, lowers its standards and brings them into disrepute. It is for this reason that every judge must cultivate a capacity for quick decision; he must not delay the judgment which a party justly deserves. The public trust reposed in a judge's office imposes upon him the highest degree of responsibility to promptly administer justice.[34]

It should be emphasized, however, that as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous, as long as he acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction.[35] The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.[36] Thus, not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice.[37] Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge. [38]

Anent the issuance of the respondent of a TRO and a writ of preliminary injunction in Civil Cases Nos. OZC-98-46 and OZC-98-49, respectively, now pending before the CA on certiorari, the Court believes that the following pronouncement in *Rallos v. Gako, Jr.*[39] is applicable:

Where there is presently pending before the Supreme Court a Petition for Review of a decision of the Court of Appeals affirming orders of a judge which are the same orders subject of an administrative complaint for gross ignorance of the law, the disposition of the administrative case should be held in abeyance, but this does not in any way imply that an administrative case cannot proceed independently of the main one.

The respondent's negligence constitutes a less serious charge, punishable under Section 9 of Rule 140[40] of the Rules of Court. The Court may still impose a fine on the respondent despite his retirement from the judiciary.

WHEREFORE, Respondent Judge Pedro L. Suan is found GUILTY of gross inefficiency and is FINED Fifteen Thousand Pesos (P15,000.00) to be deducted from his retirement benefits.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Retired as of May 2002.

[2] Rollo, pp. 30-31.

[3] Complainant's Memorandum, p. 16; Rollo, p. 167.

[4] Id. at 110.

[5] Annex "A;" Rollo, p. 48.

[6] Annex "B;" id. at 49.

[7] Annex "C;" id. at 50-51.

[8] Rollo, pp. 31-32; id. at 243.

[9] G.R. No. 142123, Court Resolution dated April 12, 2002.

[10] Complaint; Rollo, p. 34.

[11] Complainant's Memorandum, pp. 5-6; id. at 156-157.

[12] Report, p. 5.

[13] Complaint, pp. 3-4; Rollo, pp. 32-33.

[14] Id. at 33-34.

[15] Sec. 4. Verified application and bond for preliminary injunction or temporary restraining order. – A preliminary injunction or temporary restraining order may be granted only when:

...

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted.

[16] Rollo, p. 34.

[17] Sec. 5. Preliminary injunction not granted without notice; exception. –

...

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to the service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided therein.

[18] Rollo, p. 158.

[19] Report, pp. 6-7.

[20] Report, p. 7.

[21] G.R. No. 147865.

[22] Complainant's Memorandum, p. 11; Rollo, p. 162.

[23] Exhibit "U;" Rollo, pp. 209-210.

[24] Rollo, pp. 1-14.

[25] Report, p. 12.

[26] Id. at 12-13.

[27] Id. at 13-14.

[28] Id. at 14.

[29] Id. at 13.

[30] Id. at 11-12.

[31] Millare v. Valera, 325 SCRA 434 (2000).

[32] Macachor v. Judge Beldia, Jr., A.M. No. RTJ-02-1724, June 12, 2003.

[33] Saylo v. Rojo, 330 SCRA 243 (2000).

[34] Gil v. Judge Lopez, Jr., A.M. No. MTJ-02-1453, April 29, 2003; Taran v. Judge Jacinto, Jr., A.M. No. MTJ-02-1436, April 3, 2003.

[35] Castaños v. Escaño, Jr., 251 SCRA 174 (1995).

[36] Abdula v. Guiani, 326 SCRA 1 (2000).

[37] Rallos v. Gako, Jr. 328 SCRA 324 (2000); Calleja v. Santelices, 328 SCRA 61 (2000).

[38] Guillermo v. Reyes, Jr., 240 SCRA 154 (1995).

[39] Supra.

[40] Sec. 9. Less Serious Charges. - Less serious charges include:

- Undue delay in rendering decision or order, or in transmitting the records of a case;

...

Section 11(B) of the Same Rule provides the penalty therefor:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

- Suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or

- A fine of not more than P10,000.00 but not exceeding P20,000.00.

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