

**MA. LOURDES B. CAJANDING, MA. CORAZON O. NATIVIDAD,  
ROSAURO S. LUMBAD, CELSO F. PASCUAL, SR., SERAFIN T.  
TERENCIO, FELICITAS CALMA AND NORMA ILAGAN, PETITIONERS,  
VS. MA. MERCEDE...**

Ponente: ELBINIAS, J.

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**ELBINIAS, J.:**

Addressed here is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order Nos. 1,[2] 2,[3] and 3,[4] all dated November 11, 2005, of presiding Judge Hon. Victoria Villanon-Pornillos (“presiding Judge” for brevity) of the Regional Trial Court of Malolos, Bulacan, Branch 10 (“respondent court” for brevity) in Civil Case No. 296-M-2005 for “Injunction with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order”. [5] The Petition also questions respondent court's Order[6] dated August 8, 2006, which denied petitioners' eventual “URGENT MOTION TO RECALL ORDERS (sic) Nos. 1, 2, and 3, all dated November 11, 2005.” [7]

The antecedent facts are as follows:

On April 12, 2005, private respondent Ma. Mercedes Cerezo (“private respondent” for brevity) filed a Complaint[8] for “Injunction with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order” against petitioners Ma. Lourdes Cajanding (“Cajanding” for brevity), Ma. Corazon Natividad (“Natividad” for brevity), Rosauro Lumbad (“Lumbad” for brevity), Celso Pascual, Sr. (“Pascual” for brevity), Serafin Terencio (“Terencio” for brevity), Felicitas Calma (“Calma” for brevity), and against Norma Ilagan (“Ilagan” for brevity), all of whom are collectively known here as “petitioners”.

Private respondent, in her Complaint[9] below, questioned the validity and sought the nullification of: the election of officers of the Caniogan Credit and Development Cooperative (“Cooperative” for brevity) held on April 3, 2005; the proclamation of petitioners Pascual, Sr., Terencio, Lumbad, Ilagan and Calma[10] as the newly elected Board of Directors of the Cooperative, and; the Resolution No. 05-04-01 of the Board of Directors of the Cooperative.[11]

On April 18, 2005, petitioners filed their Answer[12] to private respondent's Complaint.[13]

On April 20, 2005, respondent court issued an Order[14] directing the parties to maintain the status quo in the Cooperative.[15]

Due to petitioners' alleged violation of respondent court's Order[16] dated April 20, 2005, private respondent filed a “MOTION TO CITE DEFENDANTS IN CONTEMPT OF COURT AND TO SET THE CASE FOR CONTINUOUS (sic) HEARING” [17] (“Motion to Cite Defendants in Contempt” for brevity) dated October 9, 2005.

Subsequently, private respondent filed an undated “MOTION FOR INHIBITION” of the presiding Judge of respondent court. According to private respondent, “by reason of the unreasonable delay in the proceedings in this

case, [private respondent has] already nurtured at the back of her mind that the Honorable Presiding Judge is favoring the [petitioners] in this case and had unmeritoriously titled the scales of justice against her.”[18]

However, petitioners failed to attend the hearing on the Motion to Cite Defendants in Contempt.

Thus, on November 11, 2005, respondent court issued the assailed Order Nos. 1,[19] 2,[20] and 3.[21]

In its Order No. 1,[22] respondent court stated that petitioners' failure to appear at the hearing of the Motion to Cite Defendants in Contempt filed by private respondent against them was “an express waiver on their part to present evidence in opposition to the pending incidents.”[23]

In its Order No. 2[24], respondent court found petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan guilty for Indirect Contempt, and were individually sentenced to pay a fine of Php3,000.00. The dispositive portion of the Order stated:

“As there has been unilateral assumption on the part of the defendants as members of the Board of Directors of Caniogon Cooperative, a clear violation and/or defiance of the Orders dated April 20, 2005 and July 26, 2005, defendants Celso Pascual, Serafin Terencio, Rosauro Lumbad, Felicitas Calma, and Norma Ilagan are hereby FOUND GUILTY of indirect contempt and hereby individually SENTENCED to pay a fine of P3,000.00 to the Regional Office of RTC Malolos City, Bulacan Atty. Emmanuel Ortega.

SO ORDERED.”[25] (Emphasis was made in the original)

In its Order No. 3,[26] respondent court issued a Writ of Preliminary Injunction in favor of private respondent “enjoining [petitioners] Rosauro Lumbad, Celso Pascual, Serafin Terencio, Felicitas Calma, and Norma Ilagan from assuming their posts as members of the Board of Directors of Caniogon Credit and Development Cooperative, upon the posting by the [private respondent] of an Injunction Bond in the amount of P100,000.00, either cash or thru bonding company with an up-dated Certificate of Accreditation and Authority from the OCAD.”[27]

After petitioners' “URGENT MOTION TO RECALL ORDERS (sic) NOS. 1, 2, and 3 ALL DATED NOVEMBER 11, 2005”[28] was denied by respondent court in its other assailed Order[29] dated August 8, 2006, petitioners filed the Petition[30] at bench, praying that:

“WHEREFORE, it is most respectfully prayed of this Honorable Court that the instant petition be given due course; and after due hearing[,] judgment be rendered in favor of the petitioners, declaring as null and void the subject Order Nos. 1, 2 and 3, all dated November 11, 2005 xxx.

Petitioners further pray for such other reliefs and remedies just and proper under the premises.”[31]

Petitioners raised this sole ground:

“The respondent judge committed grave abuse of discretion, amounting to lack or excess of jurisdiction in issuing Order Nos. 1, 2 and 3, all dated November 11, 2005. It is the contention of the petitioners that the subject Order Nos. 1, 2 and 3, all dated November 11, 2005 and the subsequent [O]rder dated August 8, 2006 denying petitioners' motion to recall said Order Nos. 1, 2 and 3 were issued without jurisdiction and with grave abuse of discretion, amounting to lack or excess of jurisdiction.”[32]

Petitioners' failure to file a Motion for Reconsideration could be considered as an exception to the rule which requires the filing of a Motion for Reconsideration before the filing of a Petition for Certiorari under Rule 65 of the Rules of Court.[33] This is because respondent court's issuance of Order No. 1[34] and Order No. 2[35], both dated November 11, 2005, was patently erroneous,[36] as will be explained below.

As correctly argued by petitioners in their sole assigned ground, respondent court gravely abused its discretion in

issuing Order No. 2[37] dated November 11, 2005, which found petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan liable for Indirect Contempt.

This is because petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan were cited in Indirect Contempt without private respondent having complied with the requirements of Section 4, Rule 71 of the Rules of Court, which states:

“SEC. 4. How proceedings commenced. - Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.” (Emphasis supplied)

Here, private respondent did not file an independent and verified Petition for Indirect Contempt against petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan. Instead, private respondent initiated the Indirect Contempt charge against petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan only through a “MOTION TO CITE DEFENDANTS IN CONTEMPT OF COURT AND TO SET THE CASE FOR CONTINUOUS (sic) HEARING”[38] dated October 9, 2005. Considering that private respondent only filed a Motion, such Indirect Contempt charge was not docketed, heard, and decided separately from the main case pending before respondent court.

That an Indirect Contempt charge, which is initiated by a party such as private respondent, must be filed through an independent and verified petition, is pursuant to the following pronouncement of the Supreme Court in *Mallari v. Government Service and Insurance System and the Provincial Sheriff of Pampanga*, G.R. No. 157659, January 25, 2010:

“Indeed, a person may be charged with indirect contempt only by either of two alternative ways, namely: (1) by a verified petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a verified petition, unless the charge is directly made by the court against which the contemptuous act is committed.

Justice Regalado has explained why the requirement of the filing of a verified petition for contempt is mandatory:

1. This new provision clarifies with a regulatory norm the proper procedure for commencing contempt proceedings. While such proceeding has been classified as a special civil action under the former Rules, the heterogeneous practice, tolerated by the courts, has been for any party to file a mere motion without paying any docket or lawful fees therefor and without complying with the requirements for initiatory pleadings, which is now required in the second paragraph of this amended section. Worse, and as a consequence of unregulated motions for contempt, said incidents sometimes remain pending for resolution although the main case has already been decided. There are other undesirable aspects but, at any rate, the same may now be eliminated by this amendatory procedure.

Henceforth, except for indirect contempt proceedings initiated motu proprio by order of or a formal charge by the offended court, all charges shall be commenced by a verified petition with full compliance with the

requirements therefor and shall be disposed of in accordance with the second paragraph of this section.

Clearly, the petitioner's charging GSIS, et al. with indirect contempt by mere motions was not permitted by the Rules of Court.

And, secondly, even assuming that charges for contempt could be initiated by motion, the petitioner should have tendered filing fees. The need to tender filing fees derived from the fact that the procedure for indirect contempt under Rule 71, Rules of Court was an independent special civil action. Yet, the petitioner did not tender and pay filing fees, resulting in the trial court not acquiring jurisdiction over the action. Truly, the omission to tender filing fees would have also warranted the dismissal of the charges." (Emphasis supplied; italics was made in the original)

Given that the Indirect Contempt charge filed by private respondent against petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan was not in compliance with what was required under Section 4, Rule 71 of the Rules of Court, then, such charge should have been outrightly dismissed by respondent court.

For failure of respondent court to dismiss the Indirect Contempt case, the Indirect Contempt proceedings conducted by respondent court were null and void. Thus, respondent court, in issuing the assailed Order No. 1[39], which declared petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan to have waived their right to present evidence to the Indirect Contempt Charge filed against them, and in issuing the assailed Order No. 2[40], which eventually declared petitioners Pascual, Terencio, Lumbad, Calma, and Ilagan guilty for Indirect Contempt, was shown to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[41]

Moreover, there is no need to discuss the issue on the propriety of respondent court's Order No. 3[42] dated November 11, 2005, which issued a Writ of Preliminary Injunction in favor of private respondent. This is because the question on the propriety of respondent court's Order No. 3,[43] had been rendered moot and academic by respondent court's rendering of its Order dated January 23, 2007, which dismissed with finality private respondent's Complaint[44] for "Injunction with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order" ("Complaint" for brevity). Such Order was affirmed by the Special Third Division of the Court of Appeals (CA) in its Decision dated September 21, 2011 in CA-G.R. CV No. 94150.[45]

Petitioners themselves, in their Compliance[46] dated October 24, 2011, manifested that the propriety of the resolution of respondent court's Order No. 3 dated November 11, 2005 had been rendered moot[47] by respondent court's issuance of the Order dated January 23, 2007.

Consequently, the issue on the propriety of the issuance by respondent court of Order No. 3[48] granting Writ of Preliminary Injunction against petitioners no longer existed. There was no longer any controversy, such that any ruling on the propriety of respondent court's Order No. 3[49] in the Petition[50] at bench would have no operational effect or consequence, especially among the parties.

That these circumstances indicate that the issue on the propriety of the issuance of Order No. 3[51] by respondent court had indeed become moot and academic, was as had been similarly pronounced by the Supreme Court in *Galicto v. H.E. Benigno Aquino III*, in his capacity as President of Republic of the Philippines, et al., G.R. No. 193978, February 28, 2012, to wit:

"A moot case is 'one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.' '[A]n action is considered 'moot' when it no longer presents a justiciable controversy because the issues involved have become academic or dead[,] or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties xxx.' Simply stated, there is nothing for the xxx court to

resolve as [its] determination xxx has been overtaken by subsequent events.” (Emphasis supplied)

Thus, after careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and in accordance with what is best determined to be proper under the circumstances, the following disposition is made on these matters.

GIVEN ALL THESE, and taking into consideration that respondent court's Order No. 3 dated November 11, 2005 has been rendered moot and academic, the Petition is PARTLY GRANTED in that respondent court's Order Nos. 1 and 2 dated November 11, 2005 are SET ASIDE and ANNULLED.

**SO ORDERED.**

Didican (Chairman) and Paredes, JJ., concur.

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[1] Rollo, pp. 1-10.

[2] Rollo, p. 65.

[3] Rollo, pp. 66-67.

[4] Rollo, pp. 68-69.

[5] Rollo, p. 100

[6] Rollo, pp. 79-81.

[7] Rollo, pp. 71-73.

[8] Rollo, pp. 100-112

[9] Rollo, pp. 100-112

[10] Rollo, p. 18.

[11] Rollo, p. 18.

[12] Rollo, pp. 46-51.

[13] Rollo, pp. 100-112

[14] Rollo, pp. 54-56.

[15] Rollo, p. 56.

[16] Rollo, pp. 54-56.

[17] Rollo, pp. 57-58.

[18] Rollo, p. 63.

[19] Rollo, p. 65.

[20] Rollo, pp. 66-67.

[21] Rollo, pp. 68-69.

[22] Rollo, p. 65.

- [23] Rollo, p. 65.
- [24] Rollo, pp. 66-67.
- [25] Rollo, pp. 66-67.
- [26] Rollo, pp. 68-69.
- [27] Rollo, p. 69.
- [28] Rollo, pp. 71-73.
- [29] Rollo, pp. 79-81.
- [30] Rollo, pp. 1-10.
- [31] Rollo, pp. 7-8.
- [32] Rollo, p. 5.
- [33] People of the Philippines vs. Arturo F. Duca, G.R. No. 171175, October 30, 2009
- [34] Rollo, p. 65.
- [35] Rollo, pp. 66-67.
- [36] People of the Philippines vs. Arturo F. Duca, G.R. No. 171175, October 30, 2009
- [37] Rollo, pp. 66-67.
- [38] Rollo, pp. 57-58.
- [39] Rollo, p. 65.
- [40] Rollo, pp. 66-67.
- [41] First Women's Credit Corporation, et al. vs. Glicerio Perez, et al., G.R. No. 169026, June 15, 2006.
- [42] Rollo, pp. 68-69.
- [43] Rollo, pp. 68-69.
- [44] Rollo, pp. 100-112.
- [45] Rollo, pp. 217-218.
- [46] Rollo, pp. 217-218.
- [47] Rollo, p. 218.
- [48] Rollo, pp. 68-69.
- [49] Rollo, pp. 68-69.
- [50] Rollo, pp. 1-10.
- [51] Rollo, pp. 68-69.

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