3-D INDUSTRIES, INC. AND SMARTNET PHILIPPINES, INC. COMPLAINANTS, VS. JUSTICES VICENTE Q. ROXAS AND JUAN Q. ENRIQUEZ, JR., RESPONDENTS.

A.M. No. CA-10-50-J [formerly A.M. OCA IPI No. 09-152-CA-J]. October 05, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Referred for appropriate action by the Office of the Ombudsman to this Court's Office of the Court Administrator is the verified May 13, 2005 Complaint[1] with enclosures of 3-D Industries, Inc. (3-D), and Smartnet Philippines, Inc. (Smartnet) represented by Gilbert Guy (Gilbert), against Court of Appeals (CA or appellate court) Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act[2] (R.A. 3019, as amended) relative to the admission, by the Eighth Division of the CA, of which said Justices were members, of a Supplemental Petition for Certiorari and Second Supplemental Petition for Certiorari in CA-G.R. SP No. 87014, "Northern Islands Co., Inc., et al. v. Hon. Artemio S. Tipon, et al."

Culled from Guy v. Court of Appeals,[3] decided by this Court on December 10, 2007, are the following antecedent facts:

Herein complainant Smartnet's representative Gilbert is the son of the spouses Francisco and Simny Guy. The spouses organized Northern Islands Co., Inc. (NICI) which is engaged in the manufacture, distribution, and sale of various home appliances bearing the "3-D" trademark. The spouses also organized Lincoln Continental Development Corporation, Inc. (Lincoln Continental) as a holding company of 50% of the 20,160 shares of stock of NICI in trust for their three daughters Geraldine, Gladys and Grace-sisters of Gilbert.

Finding that their son Gilbert had been dissipating the assets of Lincoln Continental, the spouses Guy caused the registration of 50% of the 20,160 shares of stock of NICI in the names of their three daughters, thus enabling the latter to assume an active role in the management of NICI.

On March 18, 2004, Lincoln Continental filed a complaint at the Regional Trial Court (RTC) of Manila against NICI and Gilbert's parents-the spouses Guy and three sisters (hereafter the Guy family), for annulment of the transfer of the 50% NICI shares of stock to Gilbert's sisters. The complaint, docketed] as Civil Case No. 04-109444, prayed for, among other things, the restoration of the management of NICI to Gilbert, and the issuance of a Temporary Restraining Order (TRO) and a writ of preliminary mandatory injunction to prohibit Gilbert's sisters from exercising any right of ownership over the questioned shares.

Lincoln Continental later filed a Motion to Inhibit the Presiding Judge of Branch 24 of RTC Manila to which its complaint was raffled on the ground of partiality. The Motion was granted and the case was re-raffled to Branch 46 of the same court.

NICI and the Guy family challenged the inhibition of the Presiding Judge of Branch 24 via Certiorari and

Mandamus before the CA in which they prayed for, among other things, the issuance of an order restraining the Presiding Judge of Branch 46 from further hearing Civil Case No. 04-109444.

In the meantime, Branch 46, acting on the prayer of Lincoln Continental, issued on June 15, 2004 a TRO restoring the management of NICI to Gilbert. Branch 46 subsequently issued on October 13, 2004 writ of preliminary mandatory injunction as prayed for by Lincoln Continental.

On account of the issuance by the Manila RTC Branch 46 of a writ of preliminary mandatory injunction in favor of Lincoln Continental, the CA-Tenth Division, by Resolution of October 20, 2004, denied NICI's and the Guy family's petition for Certiorari and Mandamus.

NICI and the Guy family thereafter filed a new petition for Certiorari with application for TRO/preliminary injunction, docketed as CA-G.R. SP No. 87104, praying for the nullification of the above-mentioned RTC Manila Branch 46's TRO dated June 15, 2004 and Writ of Preliminary Mandatory Injunction dated October 13, 2004 and the restoration of the status quo ante. This new petition was raffled to the appellate court's Eighth Division.

Acting on NICI and the Guy family's new petition, the CA-Eighth Division issued on October 28, 2004 a TRO enjoining the implementation of the October 13, 2004 Writ of Preliminary Mandatory Injunction issued by the Manila RTC Branch 46.

On November 2, 2004, NICI and the Guy family filed with the CA-Eighth Division an Urgent Omnibus Motion praying for the issuance of a Break-Open Order[4] to implement the appellate court's October 28, 2004 TRO. The motion was granted by Resolution of November 4, 2004 pursuant to which the Guy family entered the NICI premises at No. 3 Mercury Avenue, Libis, Quezon City.

Herein Smartnet, one of the occupants of the NICI premises, filed on December 16, 2004 with the Metropolitan Trial Court (MeTC) of Quezon City a complaint for forcible entry against NICI and the Guy family, docketed as Civil Case No. 35-33937.

In the meantime, the CA-Eighth Division directed the issuance of a writ of preliminary injunction prayed for by NICI and the Guy family in their new petition, CA-G.R. SP No. 87104, and a writ was accordingly issued on December 22, 2004.

Gilbert later filed a complaint for replevin on behalf of 3-D, docketed as Civil Case No. 70220, before the RTC of Pasig City. The complaint was given due course by Branch 71 of the RTC Pasig which issued on January 18, 2005 a writ of replevin in favor of 3-D, prompting the NICI and the Guy family to file on January 20, 2005 before the CA-Eighth Division a Supplemental Petition for Certiorari with Urgent Motion for a Writ of Preliminary Injunction to Include Supervening Events. The Supplemental Petition[5] impleaded as additional respondents herein complainant 3-D, Judges Celso D. Laviña, Presiding Judge, RTC, Branch 71, Pasig City and Sheriff Cresencio Rabello, Jr., alleging that Gilbert, in an attempt to circumvent the TROs and injunctive writ issued by the CA-Eighth Division, allowed himself to be used by 3-D by filing, on its behalf, a complaint for replevin.

By Resolution of January 24, 2005, the appellate court's Eighth Division issued the questioned Resolution admitting the Supplemental Petition for Certiorari.

Still later, NICI and the Guy family filed on April 15, 2005, before the CA-Eighth Division a Second Supplemental Petition for Certiorari and Prohibition with Urgent Motion for the Issuance of an Expanded Writ of Preliminary Injunction,[6] impleading as additional respondent herein complainant Smartnet, among others.

In the Second Supplemental Petition, NICI and the Guy family raised, in the main, the allegedly continuing forum shopping of Gilbert by continuing to use Smartnet, inter alia, as alter ego and dummy to institute various cases in

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court to gain control of the properties of NICI.[7]

By Resolution of April 26, 2005, the members of the appellate court's Eighth Division, which had segued to the Seventh Division including respondents, admitted the Second Supplemental Petition for Certiorari and restrained the additionally impleaded respondents including Smartnet from disturbing the December 22, 2004 writ of preliminary injunction[8] issued by the Eighth Division of which respondents were members.

In the present administrative complaint, complainants allege that in issuing the assailed Resolutions dated January 24, 2005 and April 26, 2005, respondents caused undue injury to them by, among other things, giving the petitioners (NICI and the Guy Family) in the new petition for Certiorari unwarranted benefits, advantage or preference through manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of their judicial functions in violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.[9]

Complainants likewise allege that respondents, in issuing the questioned Resolutions, had "maneuvered" the assignment to the Eighth Division of the "supplemental" petitions of NICI and the Guy family, which were, however, completely different from the new petition for Certiorari, for the purpose of assuring that those "supplemental" petitions would not be raffled or assigned to other possibly unsympathetic divisions of the appellate court.[10]

Furthermore, complainants allege that the conclusory ruling in the questioned Resolutions was a "lame pretext" since the properties involved therein are not in custodia legis, and there was no factual basis that 3-D is a mere alter ego or dummy of Gilbert.[11]

Finally, complainants allege that the Divisions in which respondents were sitting had mutated into a "judicial vending machine," regularly dispensing TROs and injunctions at an "impressive maximum" of five days from the filing of the pleadings by the petitioners.[12]

By Resolution of July 28, 2009, the Court required respondent Justice Enriquez to comment on the complaint and to show cause why he should not be suspended, disbarred or otherwise disciplinary sanctioned; and to refer the complaint against Justice Vicente Q. Roxas, who was already out of the service, to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Respondent Justice Enriquez filed his Comment dated September 16, 2009, emphasizing that the questioned Resolution of April 26, 2007 was upheld by this Court in its Decision in G.R. No. 165849, Guy v. Courts of Appeals,[13] hence, complainants' allegation of manifest partiality, evident bad faith, gross negligence, and derogation of established procedure is totally devoid of factual and legal basis. He informs that he was neither the ponente of this assailed Resolution nor the Senior Member of the now Seventh Division of the appellate court.

In compliance with this Court's Resolution of October 6, 2009, complainants filed a Reply dated December 4, 2009, laying emphasis on the fact that this Court's decision in Guy v. Courts of Appeals was completely silent on the issue of whether the CA-Eighth Division could expand the coverage of the Writ of Preliminary Injunction of December 22, 2004 restraining Manila RTC Branch 46 from implementing the Writ of Preliminary Mandatory Injunction which restored the management of NICI to Gilbert.

Complainants add that the appellate court's Eighth Division acted with undue haste in precipitately admitting the two Supplemental Petitions for Certiorari on the basis of the bare and unsubstantiated allegation that Gilbert was using herein complainants as his alter egos to wrest control and possession of the assets and properties of NICI.

Meanwhile, the IBP Commission on Bar Discipline endorsed back to the Office of the Bar Confidant on September 23, 2009 the complaint respecting Justice Roxas, in compliance with the September 5, 2006 Resolution

of this Court in Bar Matter 1645.[14]

The present complaint in so far as it involves complainant 3-D raises issues not passed upon by this Court in Guy v. Courts of Appeals. It bears noting that the complaint was indorsed by the Office of the Ombudsman to this Court specifically for a determination of whether respondents acted within their duties, pursuant to Fuentes v. Office of the Ombudsman-Mindanao[15] which ruled:

> . . . [I]t is the Supreme Court that is tasked to oversee the Judges and Court personnel and take the proper administrative action against them if they commit any violation of the laws of the land.

The present complaint thus stemmed from the participation of respondents in the issuance of the two assailed Resolutions dated January 24, 2005 and April 26, 2005, which admitted the Supplemental and Second Supplemental Petitions, respectively, of NICI and the Guy family impleading herein complainants, among others, as additional respondents in CA-G.R. SP No. 87104, thereby including them in the coverage of the injunctive writ issued therein on December 22, 2004 enjoining the implementation of the Manila RTC Branch 46 Order which restored the management of NICI to Gilbert. Recall that complainants charge that by their questioned Resolutions, respondents violated Section 3(e) of R.A. No. 3019 for allegedly giving unwarranted benefits to NICI and the Guy family.

There are two ways by which Section 3(e), R.A. No. 3019 may be violated,[16] viz: 1) by giving undue injury to any party, including the Government, 2) by causing any private party any unwarranted benefit, advantage or preference.[17] These acts must be committed with manifest partiality, evident bad faith, or gross and inexcusable negligence.

Manifest partiality has been defined as "a clear, notorious or plain inclination or predilection to favor one side rather than the other."[18] Bad faith connotes not only bad judgment or negligence, but also a dishonest purpose, a conscious wrongdoing, or a breach of duty amounting to fraud.[19] Gross negligence is the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences as far as other persons are concerned.[20]

That the assailed Resolutions issued by respondents favored NICI and the Guy family does not necessarily render respondents guilty of violation of Section 3(e) of R.A. No. 3019, absent proven particular acts of manifest, evident bad faith or gross inexcusable negligence, good faith and regularity being generally presumed in the performance of official duties by public officers.[21]

That is why administrative complaints against judges must always be examined with a discriminating eye for its consequential effects are, by their nature, highly penal, such that they stand to face the sanction of dismissal and/or disbarment.[22] In order for this administrative offense to prosper, the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but, more importantly, must be attended by bad faith, fraud, dishonesty or corruption.[23]

Since the impleading of additional parties, on motion of any party or motu proprio at any stage of the action and/or such times as are just is allowed,[24] the Court finds that respondents' participation in the admission of the supplemental petitions impleading herein complainants as respondents in CA-G.R.SP No. 87104 does not render them administratively liable.

While respondents may have based the assailed Resolutions on mere allegations, thus disregarding what has been established in jurisprudence that "mere allegation that a corporation is the alter ego of the individual stockholders is insufficient,"[25] this does not render them administratively liable because 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,[26] which is not the case here.

WHEREFORE, the administrative complaint is DISMISSED.

WE CONCUR:

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Mendoza, and Sereno, JJ., concur,
Brion, J., on official leave.
Perez, J., no part, acted on the matter as Court Administrator.

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[1] Rollo, p. 1.

[2] Section 3. Corrupt practices of public officers.-In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

> x x x x
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> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of the offices or government corporations charged with the grant of licenses or permits or other concessions.

[3] G.R. Nos. 165848, 170185, 170186. 171066 and 176650, December 10, 2007, 539 SCRA 584.

[4] Supra note 3 at 593.

[5] Vide rollo, p. 4 and 10.

[6] Vide id. at 2 and 9.

[7] Vide id. at 11.

[8] Vide id. at 13.

[9] Id. at 3.

[10] Ibid.

[11] Id. at 4.

[12] Id. at 5.

[13] Supra note 3.

[14] This resolved to amend the second paragraph of Section 1, Rule 139-B of the Rules of Court by directing the IBP to forward to the Supreme Court all complaints for disbarment, suspension and discipline filed against incumbent Justices of the Court of Appeals, Sandiganbayan, Court of Tax Appeals and judges of lower courts, whether or not they are charged singly or jointly with other respondents, and whether or not the complaint against them arose from the discharge of their official functions. The same procedure is observed with respect to complaints against retired justices and judges.

[15] G.R. No. 124295, October 23, 2001, 368 SCRA 36, 37.

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[16] Santiago v. Garchitorena, G.R. No. 109266, December 2, 1993, 228 SCRA 214, 222.

[17] Velasco v. Sandiganbayan, 492 Phil 669, 677 (2005).

[18] Reyes v. Atienza, G.R. No. 152243, September 23, 2005, 470 SCRA 670, 683, citing Marcelo v. Sandiganbayan, G.R. No. 69983, May 14 1990, 185 SCRA 346.

[19] Dela Chica v. Sandiganbayan, 462 Phil 712, 721 (2003).

[20] Mendoza-Arce v. Office of the Ombudsman, 430 Phil 101, 115 (2002).

[21] Re: Subpoena Duces Tecum dated January 11, 2010 of Acting Director Aleu A. Amante, PIAB-C, Office of the Ombudsman, A.M. No. 10-1-13-SC, March 2, 2010 citing Dela Chica v. Sandiganbayan, 462 Phil. 712, 722 (2003).

[22] Borromeo-Garcia v. Pagaytan, 566 SCRA 320.

[23] Office of the Solicitor General v. Judge De Castro, A.M. NO. RTJ-06-2018, 3 August 2007, 529 SCRA 157, 174.

[24] Vda. De Manguera v. Risos, G.R. No. 152643, August 28, 2008, 563 SCRA 499.

[25] Ramoso v. Court of Appeals, G.R. No. 117416, December 8, 2000.

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

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