

RE: LETTER-COMPLAINT AGAINST HON. JUSTICES ANTONIO T. CARPIO AND MARIA LOURDES P.A. SERENO DATED SEPTEMBER 16, 2011 FILED BY ATTY. MAGDALENO M. PEÑA

A.M. No. 12-6-11-SC. June 13, 2012

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PER CURIAM:

In 1996 complainant Magdaleno M. Peña filed an action against Urban Bank and certain members of its Board of Directors before the Regional Trial Court (RTC) of Bago City, Negros Occidental, for recovery of agent's compensation and attorney's fees allegedly for services he rendered in evicting the occupants of a bank property in Pasay City. The RTC rendered judgment in the case, ordering defendants to pay Peña P28.5 million as compensation, attorney's fees, reimbursement of expenses, and exemplary damages plus costs of suit.

The bank appealed the decision to the Court of Appeals (CA) but Peña succeeded in getting the RTC to allow execution of the decision in his favor pending appeal. The defendants challenged the advance execution before the CA with the result that the latter rendered judgment, stopping and annulling the same. On motion, however, the CA amended its decision and allowed execution pending appeal because the bank in the meantime ran into financial difficulties.

Nevertheless, the CA stayed the execution insofar as three defendant directors were concerned after they posted a P40 million bond in Peña's favor. Because the stay did not cover Urban Bank and the rest of its directors, the sheriff levied on and sold some of their properties, including the bank's club shares in Makati Sports Club, Inc. (MSCI).

In any event, with the denial of their motion for reconsideration, the defendants affected by the execution pending appeal filed separate petitions for review of the CA's amended decision before this Court in G.R. 145817, 145818,[1] and 145822, which were eventually consolidated and assigned to the Court's Member-in-Charge to whom the lower number was raffled, namely, to Justice Antonio T. Carpio.

Following the lead of the three defendant directors, Urban Bank filed with this Court a motion to approve a P40 million supersedeas bond for the stay of the execution of the RTC decision pending adjudication of its appeal in the main case. The Court granted the motion by its resolution of November 19, 2001 that reads:

Considering the motion of petitioner Urban Bank, Inc. in G.R. No. 145817 to approve the attached supersedeas bond issued by the Malayan Insurance Co., Inc. in the amount of P40,000,000.00, posted by petitioner bank to secure the claims of respondent against petitioner and to stay the execution pending appeal of the decision of the Regional Trial Court of Bago City, Branch 62, in Civil Case No. 754, entitled "Atty. Magdaleno M. Peña vs. Urban Bank, Inc., et al.," as well as the opposition thereto of respondent Magdaleno M. Peña, the Court resolves to [1] GRANT the motion; [2] APPROVE the supersedeas bond; and [3] ORDER the stay of execution pending appeal of the decision of the Regional Trial Court of Bago City, Branch 62, in Civil Case No. 754 as against petitioner.

With the issuance of the above resolution, Export and Industry Bank (EIB), Urban Bank's successor in interest,

requested MSCI's corporate secretary not to cancel or transfer Urban Bank's club shares which were previously sold at public auction. Because of ensuing disputes between EIB and those who won the bids, on February 4, 2002 MSCI sought clarification from the Court on whether its November 19, 2001 resolution prohibited MSCI from transferring Urban Bank's shares to the winning bidders. Urban Bank itself filed an identical motion for clarification dated August 6, 2002.

On November 13, 2002 the Court, acting on the two motions, stated that its approval of the supersedeas bond "suspended or stayed" the running of the one-year period for the Bank to redeem the properties sold at public auction and prohibited the transfer of Union Bank's MSCI club shares to the winning bidders.

On December 10, 2002 Peña filed an urgent omnibus motion to expunge the bank's motion for clarification and recall the Court's November 13, 2002 resolution on the ground that he was neither furnished a copy of that motion nor given an opportunity to be heard on it.

On January 30, 2003 Peña also filed an urgent motion to Inhibit and to resolve his urgent omnibus motion, enclosing as Annexes B and C purported photocopies of pages 61 and 62 of the Court's November 13, 2002 supplemental agenda (First Division), internal documents that are regarded as highly confidential. Both annexes had marginal handwritten notes on the right side which supposedly recorded the Court's action on the items listed on the agenda. Annex B had on its left margin the handwritten note that says: "10 AC." AC are the initials of Justice Antonio T. Carpio to whom the corresponding items were assigned as Member-in-Charge.

Peña alleged that, based on the handwritten notes on the right hand margin of the November 13, 2002 supplemental agenda, the Court merely took note of the filing of the motion for clarification, listed as Item 175 (f), and did not act further on it. Consequently, the resolution bearing that date, which granted the motion, had been falsified.

Bothered by Peña's statements involving strictly confidential documents, the First Division of the Court summoned him to appear before it on March 3, 2003. The purpose of the hearing was to find out where he got his Annexes and if they were authentic. The members of the Division told him outright that, while his Annex B was a copy of the printed agenda, the handwritten notations on the same did not belong to any of the Justices of the First Division.

On April 28, 2003 the Court directed the Office of the Bar Confidant (OBC) to conduct a formal investigation of Atty. Peña for submitting a falsified document, Annex B, to the Court and to submit its findings and recommendations. On the basis of the OBC's initial Report of August 1, 2003 and upon resolution of the Court dated December 10, 2003, a formal charge of falsification was filed against Peña in A.C. 6332, entitled Re: Supreme Court Resolution dated April 28, 2003.

On September 19, 2011 Peña filed the present complaint against Justices Carpio and Sereno. Peña averred that Justice Carpio, as Member-in-Charge of the consolidated cases, caused the issuance of the falsified November 13, 2002 resolution which suspended and stayed the transfer of MSCI's club shares from Urban Bank to those who won them in the bidding. Peña repeated his claim that the Court merely took note of Urban Bank's motion for clarification and did not grant it. Peña also pointed out that opposing counsel, Atty. Manuel Singson, got an advance copy of the November 13 resolution, and faxed it to him on November 19, 2002, days before the Court released it for mailing.

With respect to Justice Sereno, Peña alleged that, as Member-in-Charge to whom the main cases were re-raffled, she unjustifiably refused to inhibit herself from the case notwithstanding that Justice Carpio's former law office, the Villaraza Cruz Marcelo Angangco Law Office, had a significant role in her appointment to the Supreme

Court. Peña said that, because of this, Justice Sereno “will attempt to protect Justice Carpio.”

Pending consideration of Peña’s present complaint, on October 19, 2011 the Second Division rendered a decision in the consolidated cases (G.R. 145817, 145822, and 162562) respecting the merits of Peña’s claim for compensation, among others, against Urban Bank and the execution pending appeal of the RTC’s decision. Apart from disposing of the principal actions on their merits, in the per curiam Decision of the Court en banc promulgated on April 17, 2012 in A.C. No. 6332, the Court found Peña guilty for violating Canons 8, 10 and 11 of the Code of Professional Responsibility and for failing to give due respect to the Courts and his fellow lawyers, and meted out to him the penalty of disbarment.

Peña claimed that Justice Carpio caused the issuance of the Court’s November 13, 2002 resolution that granted Union Bank’s motion for clarification when, based on the copy of the supplemental agenda he submitted (his Annex B), the Court merely noted the motion. But this charge has no basis. The Court did not merely note the motion. The item in the agenda included several matters. The Court’s action on the first, as the Division chairman noted on his copy of the agenda, was “SEE RES” which in the Court’s action code meant the approval during its session of the draft resolution that the Member-in-Charge submitted for consideration. As it happened, the draft resolution granted the motion for clarification.

The Court’s action on the other matters in the item, including the motion for clarification, was uniformly “N.” Under the code in use, this meant that the Court was taking note of such other matters. The two actions, approving the submitted draft of a resolution and noting the other matters are compatible. The Court noted the motion for clarification and granted it as stated in the draft resolution.

Peña also sought to ascribe to Justice Carpio the alleged fact that Atty. Singson, counsel for Urban Bank, got an advance copy of the November 13, 2002 resolution and faxed it to him on November 19, days before the Court released it for mailing. But, Peña has been unable to show that this advance copy came from Justice Carpio. Besides, the record shows that the First Division released the resolution for dissemination on November 14, days before Atty. Singson faxed a copy to Peña. Moreover, it was the Division Clerk of Court, not Justice Carpio, who had the duty to release decisions and resolutions for dissemination.[2]

In the case at bar, complainant also seeks disciplinary action against Justice Carpio for allegedly taking cognizance of Urban Bank’s Motion for Clarification of which respondent was allegedly not furnished a copy of, and for issuing the November 13, 2002 clarificatory resolution without first requiring complainant to comment on Urban Bank’s Motion. Moreover, the November 13, 2002 resolution allegedly caused irreparable damage to complainant and other auction buyers and destroyed the credibility and sanctity of valid auction sales.

Judicial remedies were available to complainant in the main cases. In fact, the allegations in the present complaint are a mere rehash of the allegations in complainant’s Urgent Omnibus Motion (To Expunge Motion for Clarification and Recall of the 13 November 2002 Resolution) dated December 9, 2002 and Urgent Motion to Inhibit and to Resolve Respondent’s Urgent Omnibus Motion dated January 30, 2003 filed in the main cases, which, in fact, have already been decided on October 19, 2011.

Peña charges Justice Sereno of unfairly refusing to inhibit herself from taking part in the deliberation in the main cases notwithstanding that Justice Carpio’s former law office supposedly worked for her appointment in the Supreme Court. But the Court had already found in its April 17, 2012 per curiam decision in A.C. No. 6332 that this charge has no “extrinsic factual evidence to support it.” The charge is purely conjectural.

WHEREFORE, Magdaleno M. Peña’s complaint against Justices Antonio T. Carpio and Maria Lourdes P.A. Sereno is hereby DISMISSED for lack of merit.

SO ORDERED.

Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Carpio J., no part, being subject of complaint.

Velasco, Jr., J., on official leave.

Sereno, J. no part., subject of the complaint.

[1] This petition filed by Teodoro Borlongan of Urban Bank was denied with finality in the resolution dated April 16, 2001 of the First Division. Thereafter, G.R. No. 145817 was consolidated with G.R. No. 145822 on November 12, 2001 and with G. R. No. 162562, on January 10, 2005.

[2] Resolution dated November 28, 2011 in G.R. Nos. 145817, 145822 and 162562, citing the Internal Rules of the Supreme Court, Rule 13, Section 10.

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