

JOAQUIN G. GARRIDO, COMPLAINANT, VS. ATTY. RAMON J. QUISUMBING, GIL ROBERTO L. ZERRUDO, FER-NANDO C. COJUANGCO, ANGEL M. ESGUERRA III AND RICARDO P.C. CASTRO, JR., RESPONDENTS.

Adm. Case No. 3724. March 31, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The complainant in this case, Joaquin G. Garrido, was one of the respondents in G.R. No.75787 entitled "Sociedad Europea de Financiacion, S.A., Julio Muñoz, Jaime Amat, in their own behalf as stockholders and in behalf of Capital Insurance & Surety Co., Inc. versus Court of Appeals, Joaquin G. Garrido, J. Amado Araneta and Progressive Commercial Bank." G.R. No. 75787 was an appeal from a decision of the Court of Appeals in AC-G.R. CV No. 03744, rendered on July 30, 1986, holding that (1) the issue of mismanagement of the Capital Insurance & Surety Co., Inc. was a matter within the exclusive jurisdiction of the Securities and Exchange Commission, and that (2) the respondents Garrido, Araneta and Progressive Commercial Bank should pay exemplary or corrective damages. Judgment in G.R. No. 75787 was promulgated by this Court on January 21, 1991, the dispositive portion of which reads as follows:

"WHEREFORE, MODIFIED so as to: (a) declare petitioners not liable to Progressive Bank for any interests, penalties or charges on or on account of the 'accommodation loan' in question, and (b) increase to P600,000.00 the exemplary or corrective damages that the private respondents are sentenced, jointly and severally, to pay said petitioners, the appealed Decision of the Court of Appeals is otherwise AFFIRMED, with costs against petitioners."

The Court inter alia found "it inexplicable, not to say ludicrous, unjust and inequitable, to hold the petitioners liable to Progressive Bank for anything on account of the latter's so-called "accommodation loan" of P600,000.00, considering that:

- "1. the proceeds of the loan were immediately placed on time deposit with the same lending institution;
2. a day after its placement, the time deposit was assigned to the same Bank, together with all rights to the interest thereon, full control of the deposit being given to said Bank until the accommodation loan was fully paid;
3. the Bank was at no time under any risk whatsoever, for an "accommodation" that it could recall at its pleasure because it retained total control of the loan proceeds under time deposit with it;
4. while retaining full disposition of the amount fictitiously loaned, said Bank reserved, and did in fact, exercise rights proper and appropriate only to the lender under a genuine forbearance, such as charging interests and, later, even foreclosing on the security for alleged nonpayment; there is no evidence that it ever set off interests on the loan with interests that the time deposit should justly have earned, only a fair arrangement in the circumstances;

5. as found by the trial court and affirmed by the Court of Appeals, the loan and accompanying pledge were simulated and the Bank was a party to the simulation."

Hence the Court's conclusion: "that the award of P100,000.00 in exemplary or corrective damages lets the private respondents off too lightly for the part they played in this sorry affair. Both the Trial Court and the Court of Appeals found that the defendants had concocted a scheme 'to divest plaintiff SEF of its interests in Capital Insurance and for themselves to own the controlling interest therein,' and carried out that illicit objective. Said award of damages should be increased to P600,000.00."

The judgment became final and executory and entry thereof was effected on March 23, 1991. Not long afterwards, with no little effrontery and temerity, it may be said, Garrido instituted another case in this Court, docketed as G.R. No. 100770 entitled "J. Garrido versus Hon. B. P. Pardo, et al." in which the basic relief sought by him consisted in the setting aside and negation of the judgment in said G.R. No. 75787. Predictably, this Court (the Third Division) dismissed the case by Resolution dated August 5, 1991 on the ground that "res judicata had already set in, ** (the case having) already been passed upon in G.R. No. 75787," and on the additional grounds of failure to comply with requirement No. 3 of Circular No. 1-88 and "utter lack of merit." Notice of this resolution was sent by registered mail to Garrido's counsel of record but was returned unclaimed. According to Postmaster Wilfredo Ulibarri of the Manila Central Post Office, "notices (of the registered letter) were issued on August 22, 29, and September 10, 1991, respectively" but these notwithstanding, counsel failed to collect the letter. It goes without saying that Garrido's counsel was deemed to have been duly served, and consequently, Garrido himself was charged with knowledge of the resolution. Entry of the resolution was thus made on January 20, 1992.

The complaint at bar is yet another attempt on the part of Joaquin Garrido either to ventilate and re-litigate issues already raised and resolved or which could have been so raised and resolved in said G.R. No. 75787, or to frustrate attempts at enforcement thereof. The complaint alleges facts which supposedly occurred at some time prior to January 21, 1991, when judgment in G.R. No. 75787 was promulgated, or before that judgment became final and was ultimately entered on March 23, 1991, or subsequently transpiring in relation to efforts to carry out and implement the judgment; it also deals with claims obviously intended to set at naught the dispositions in G.R. No. 75787. Such stratagems cannot be allowed to succeed.

Garrido's first cause of action refers to the intervention by Sociedad Europea de Financiacion (SEF) in Civil Case No. 77926 of the Regional Trial Court of Manila (Branch 42) as early as 1969 and to the supposed lack of authority of the attorneys who entered their appearance for SEF. This question was already raised and resolved in *Garrido v. Quisumbing*, 28 SCRA 6515 (1969), in which Garrido's complaint for disbarment against the late Atty. Norberto J. Quisumbing was dismissed. Garrido's other contentions regarding the alleged lack of authority of respondent Zerrudo to legally represent SEF, is utterly without foundation and is indeed contrary to the facts on record.

Garrido's second and third causes of action involve supposed falsifications committed by respondent Zerrudo in the verification accompanying the petition filed by the SEF in the Securities & Exchange Commission "to lift order of revocation of certificate of registration," as well as in the allegation therein that Atty Zerrudo is one of the attorneys of SEF, and that SEF owns 89.75% of stock of Capital Insurance in SEC, are also without foundation and contrary to the facts on record adduced by the parties. Actually, findings in respect of the stock distribution in Capital Insurance have already been made by the Court of Appeals and this Court, and may no longer be disturbed.

The fourth cause adverts to the alleged impropriety in the calling of a special stockholders' meeting of Capital Insurance by respondent Atty. Cojuangco, who was neither the chairman of the corporation nor a director thereof.

It is also without basis, being in truth contrary to evidence on record, apart from the fact that the acts complained of are sanctioned by law (Sec. 50, Corporation Code) and by the Commission itself.

The fifth cause of action questions the acts of respondents Quisumbing and Cojuangco in acting as presiding officer and secretary at the special stockholders meeting of Capital Insurance. The claims to this effect are also without basis; said acts having been done conformably with law, and in the presence of officials of SEC. Furthermore, as regards the accusation of falsity of Atty. Quisumbing's general power of attorney, there is no evidence sustaining the same.

The sixth cause of action assails a deed of assignment of shares of stock executed by respondents in favor of certain individuals; but it seems plain that the assignments were made pursuant to this Court's judgment in G.R. No. 75787, aside from the fact that there is no legal impediment to the assignments.

Finally, the seventh cause of action relating to the respondents' having "ousted the real owners of Capital Insurance," is, as already pointed out, another attempt to negate this Court's judgment.

It would appear, furthermore, that Garrido has trifled with the truth, exhibited a cavalier attitude regarding his obvious obligation to be accurate in his representations to the Court. In his verified complaint dated October 3, 1991, he stated, among many other things, that G.R. No. 100770 entitled 'Joaquin G. Garrido vs. Hon. Bernardo P. Pardo, et al.' --- in which he asked for the outlandish relief that the Court annul its final and executory decision in G.R. No. 75787, supra --- was "still pending" before this Court at that time. This is untrue because the Resolution in said G.R. No. 100770 promulgated by the Second Division on August 5, 1991 had become final and executory as of the time of Garrido's complaint, October 3, 1991. The record shows that his counsel failed to claim from the Post Office the registered letter containing a copy of said resolution within five (5) days from receipt of the first notice dated August 22 (or even from receipt of the second notice dated August 29, or the third notice dated September 10, 1991). The lawyer was consequently deemed to have been served with such resolution on the expiration of five (5) days from receipt of that first notice of August 22, 1991 in accordance with Section 8, Rule 13 of the Rules of Court. Nor did he otherwise take any steps to seek reconsideration of the resolution or appeal therefrom to this Court. Now, it was of course Garrido's duty to make certain that all the statements in his verified complaint were reflective of the truth, among which was his averment that G.R. No. 100770 was yet pending. It was thus incumbent on him at the time to inquire of his counsel about the status of the case. Had he done so, his counsel would and could have verified, quite quickly and easily, that a resolution had indeed been rendered on the case and the resolution had become final and executory in light of Section 8, Rule 13 above mentioned and his failure to act to bring about modification or reversal of the resolution. That Garrido made the statement that the case was still pending despite such information which, it may be presumed, had been given him by his lawyer, evidences his disrespect for the truth. On the other hand, if he had not bothered to inquire of his lawyer about G.R. No. 100770, this would nonetheless indicate his indifference to truthfulness and his willingness to make allegations without verification. In either case, he should be made to account for making untruthful statements in his sworn complaint.

Again, Garrido stated in his Reply dated January 22, 1992 that the majority stockholder in Capital Insurance was not SEF but a firm called Property & Liability Insurance Corporation (P & L), which he says owned 10,011 shares of stock or 50.06% thereof. Here is another wilful falsehood. The claim is contradicted by his own admission, in the same Reply, that SEF owns 8,907 out of the original 10,000 shares, or 89.07% thereof; by the certification of PGA Yasuda Insurance Company (which had purchased and taken over said P & L) to the effect that it owned only 11 shares of stock in Capital Insurance; Annex O of his own complaint, as well as this Court's Decision in G.R. No. 75787 of which he was undoubtedly aware.

In *Arcadio v. Ilagan*, 143 SCRA 168, this Court declared that "while courts will not hesitate to mete out proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, they will, on the other hand, protect them from unjust accusations of dissatisfied litigants. Private persons, particularly disgruntled opponents, may not therefore be permitted to use the courts as vehicle through which to vent their rancor on members of the Bar" (SEE also *Santos v. Dichoso*, 84 SCRA 622). So, too, the Court has ruled that where "the good name of counsel was traduced by an accusation made in reckless disregard of the truth * * the severest censure is called for" (*Albano v. Coloma*, 21 SCRA 411).

WHEREFORE, for utter lack of merit, the Court Resolved to DISMISS the complaint, and to administer the SEVEREST CENSURE on the complainant for his "reckless disregard of the truth."

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.

Bellosillo, J., on leave.

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