

VICKY C. MABANTO, Petitioner, vs. Judge MAMERTO Y. COLIFLORES, Respondent.

A.M. No. MTJ-04-1533. January 28, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is an administrative complaint filed by Vicky Mabanto against Judge Mamerto Y. Coliflores of the Municipal Trial Court in Cities (MTCC), Branch 1, Cebu City, charging him with Serious Misconduct, Inefficiency, Gross Ignorance of the Law and Violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) in connection with her supersedeas bond in Civil Case No. R-35618.

The antecedents are as follows:[1]

Complainant was the defendant in Civil Case No. R-35618 for ejectment. Judgment was rendered against her and she appealed the decision to the Regional Trial Court (RTC) of Cebu City. She posted a supersedeas bond in the amount of P45,000 to stay the execution of the judgment.

On February 17, 1997, the RTC resolved the appeal and remanded the case to the MTCC for re-trial. Complainant's counsel filed a motion to withdraw the supersedeas bond.

On May 19, 1997, complainant learned from the Clerk of Court of MTCC, Cebu City that respondent, in an Order dated September 23, 1996, granted plaintiffs' ex-parte motion to withdraw rental deposit under the bond and release the same to plaintiff, hence, the latter withdrew it on said date. Complainant claimed that respondent concealed from her and her counsel plaintiffs' motion to release the deposit under the supersedeas bond as they were not notified of the motion or the approval of the same.

Respondent, in his Comment,[2] denied having concealed from complainant and her counsel his Order dated September 23, 2006. Respondent stated that complainant's counsel, Atty. Cynthia M. Matural, was furnished a copy of the Order. He likewise explained that he directed the release of the bond upon plaintiffs' ex-parte motion because the bond would be applied to the back rentals owing to the latter. He added that from the amount of P45,000 withdrawn, P15,000 was returned to the court by plaintiffs on September 25, 1996, which amount remained as complainant's supersedeas bond.

Complainant replied that she and her counsel never received a copy of the aforesaid motion and order. Her counsel filed several motions for the release of the supersedeas bond expecting that the same was still intact. Complainant likewise insisted that respondent had no basis for issuing the assailed order because the purpose of the supersedeas bond is to guarantee the performance of the judgment appealed from if affirmed by the appellate court, and this did not happen in this case because the RTC remanded the case for re-trial.

On January 10, 2005, the case was referred to the Office of the Court Administrator (OCA).

In a Memorandum dated July 12, 2005, the OCA recommended that respondent be fined in the amount of P2,000

to be deducted from his retirement benefits. The OCA considered the fact that no malice attended respondent's action, and that the offense took place prior to the amendment of Rule 140 of the Rules of Court by A.M. No. 01-8-10-SC which imposes a heavier penalty for gross ignorance of the law.

The Court finds the recommendation of the OCA to be well taken.

A supersedeas bond in ejectment cases is conditioned upon the performance of the judgment or order appealed from in case it be affirmed wholly or in part by the appellate court. It should therefore subsist as security for the liability of the defendant to the plaintiff.[3]

Section 19(2) (3), Rule 70 of the Rules of Court requires that all moneys deposited by the defendant to stay execution of the judgment shall be held until the final disposition of the appeal, and shall be disposed of in accordance with the provisions of the judgment. It likewise provides that the plaintiff will be allowed to withdraw the money when the defendant agrees or fails to oppose plaintiff's petition. The purpose of this is to avoid damage that the defendant may suffer if plaintiff should be allowed to withdraw the money deposited when the plaintiff's right to collect the money is in issue.[4]

Here, complainant failed to oppose the motion because of the lower court's failure to inform her. Indeed, Mr. Jose Legaspi, Clerk of Court of MTCC, Branch 1, Cebu City, stated that complainant was not notified about the motion to release the supersedeas bond and the Order allowing the release of the bond. The court interpreter, Ms. Rebecca L. Alesna, also confirmed that she prepared the notice for complainant upon the instruction of respondent but due to inadvertence, she was not able to send the same to the parties.[5]

Section 4, Rule 13 of the Rules of Court requires that adverse parties be served copies of pleadings and processes. A motion without a notice of hearing addressed to the parties is a mere scrap of paper.[6] In *Cui v. Madayag*,[7] this Court held that motions that do not contain proof of service of notice to the other party are not entitled to judicial cognizance.

Without any proof of service having been made upon complainant, respondent erred in granting the motion to withdraw the deposit under the bond, and is, thus, guilty of gross ignorance of the law.

Gross ignorance of the law is a serious charge which is penalized with either dismissal from service, suspension for three (3) months without salary and benefits or a fine of not less than P20,000 but not more than P40,000.

The administrative offense, however, took place prior to the amendment of Rule 140 of the Rules of Court by A.M. No. 01-8-10-SC on September 11, 2001. In *Dayawon v. Judge Maximino A. Badilla*,[8] *Padua v. Judge Eufemio R. Molina*,[9] *Dizon v. Judge Demetrio D. Calimag*,[10] and *Prosecutor Contreras v. Judge Eddie P. Monserate*,[11] citing gross ignorance of the law but taking into account that no nefarious motive on the part of respondents had been shown, this Court imposed a fine of P2,000 with a warning.

Thus, consistent with the sanctions imposed in the aforementioned cases, this Court agrees with the recommendation of the OCA.

WHEREFORE, respondent Judge Mamerto Y. Coliflores is found GUILTY OF GROSS IGNORANCE OF THE LAW for which he is FINED P2,000 to be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J. (Chjairperson), Corona, Azcuna, and Leonardo-de Castro,. JJ., concur.

[1] Rollo, pp. 17-18.

[2] Dated July 22, 2003.

[3] Rollo, p. 18, citing *Capital Insurance and Surety Co., Inc. v. Reyes, et al.*, No. L-20789, June 20, 1996, 17 SCRA 406, 409.

[4] *Leus v. Martin*, 77 Phil. 65 (1946).

[5] Rollo, p. 18.

[6] *Basco v. CA*, 383 Phil. 671 (2000).

[7] 314 Phil. 846 (1995).

[8] A.M. No. MTJ-00-1309, September 6, 2000, 339 SCRA 702.

[9] A.M. No. MTJ-00-1248, December 1, 2000, 346 SCRA 592.

[10] A.M. No. RTJ-99-1472, September 20, 2001, 365 SCRA 448.

[11] A.M. No. MTJ-02-1437, August 20, 2003, 409 SCRA 376.

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