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# UNIVERSAL MOTORS CORPORATION REPRESENTED BY GERARDO M. GELLE, COMPLAINANT, VS. JUDGE FRANCISCO G. ROJAS, SR., REGIONAL TRIAL COURT, BRANCH 41, CAGAYAN DE ORO CITY, RESPONDENT.

*A.M. NO. RTJ-03-1814 (Formerly OCA IPI No. 03-1734-RTJ). May 26, 2005*

Ponente: PUNO, J.

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**PUNO, J.:**

This is an administrative complaint filed by Universal Motors Corporation (UMC), represented by Gerardo M. Gelle, Manager of Dealer Operations Department of said corporation, against Judge Francisco G. Rojas, Sr., Presiding Judge, Regional Trial Court, Branch 41, Cagayan De Oro City, for serious misconduct, gross ignorance of the law and grave abuse of discretion.

The background facts are as follows:

Complainant UMC is the exclusive assembler and distributor in the Philippines of Nissan light commercial vehicles and spare parts. In the pursuit of its business, it maintains a network of authorized dealers who purchase vehicles and spare parts from UMC and resell them in specified territories in the country. One of complainant's dealers was Nissan Specialist Sales Corporation (NSSC) covering Misamis Oriental and other provinces and cities in northern Mindanao, including Cagayan De Oro City.

In November 2000, NSSC ordered from complainant Nissan vehicles and spare parts worth P5,476,500.00. NSSC issued several postdated checks in favor of complainant to pay for the purchases. The checks, however, were dishonored due to insufficient funds. Complainant demanded payment from NSSC but the latter repeatedly failed to comply. Hence, complainant stopped transacting with NSSC, although the latter still remained as dealer. Complainant later appointed Nissan Cagayan De Oro Distributors, Inc. (NICAD) to co-exist as dealer with NSSC to meet the market demand in Northern Mindanao.

On October 30, 2001, because of NSSC's continued failure and refusal to pay its obligation, complainant terminated its dealership agreement with NSSC. It also filed a criminal complaint for violation of Batas Pambansa Blg. 22 and/or estafa against the officers of NSSC.

On February 22, 2002, NSSC filed Civil Case No. 2002-058 for breach of contract against complainant and its officers, Rodrigo T. Janeo, Jr. and Gerry Gelle, and NICAD and its officers, Jefferson Rolida and Peter Yap. The case was raffled to the sala of respondent Judge Francisco G. Rojas, Sr.[1]

On March 1, 2002, respondent judge issued an order setting a summary hearing on March 7, 2002 on the propriety of the issuance of a temporary restraining order.[2]

On March 6, 2002, NSSC filed an amended complaint which respondent judge admitted in his order also dated March 6, 2002. The amended complaint inserted a prayer for temporary restraining order which was not found in



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the original complaint.[3]

A hearing on the temporary restraining order was held on March 8, 2002.

On March 11, 2002, respondent judge issued a temporary restraining order "enjoining defendants, Universal Motors Corporation, Rodrigo T. Janeo, Jr., [G]erry Gelle, Nissan Cagayan de Oro Distributors, Inc., Jefferson U. Rolida and Peter Yap, their agents, representatives, successors and assigns, from continuing in selling, dealing and marketing all models of motor vehicles and spare parts of Nissan; from terminating the dealer agreement between the plaintiff NSSC and defendant UMC; to stop the entry of defendant Nissan Cagayan de Oro Distributors, Inc. and for the latter to do business on Nissan Products in the territory of plaintiff NSSC as defined in the Dealer Agreement and for defendant UMC to stop supplying and doing trading transactions with defendant Nissan Cagayan de Oro Distributors, Inc."[4]

The following day, on March 12, 2002, NSSC filed an Urgent Motion to Fix Bond for Plaintiff/Applicant and Approve/Admit Defendant's Counterbond with Prayer to Lift Temporary Restraining Order.[5]

Respondent judge denied the motion in his order dated March 18, 2002. It stated:

> Considering that during the summary hearing for the issuance of a Temporary Restraining Order, defendants/movant herein failed to present evidence to prove that they may suffered [sic] irreparable injury if ever the Court issued [sic] a Temporary Restraining Order and considering further that the Court has already exercise[d] its discretion when it issued a Temporary Restraining Order without fixing the amount of the bond, hence, defendants['] Urgent Motion to Fix Bond for Plaintiff/Applicant and Approve/Admit Defendant['s] Counterbond With Prayer to Lift Temporary Restraining Order is hereby denied for lack of merit.[6]

Respondent judge subsequently held several hearings with respect to the preliminary injunction.

On April 1, 2002, respondent judge ordered the issuance of a writ of preliminary injunction upon posting by the plaintiff of a bond in the amount of one million pesos (P1,000,000.00). The writ of preliminary injunction was issued on April 2, 2002 after NSSC filed its bond.[7]

On the same day, complainant filed with the trial court an Urgent Motion to Recall/Dissolve Order/Writ of Preliminary Injunction.[8] But respondent judge denied the same in the resolution dated April 11, 2002.[9]

Complainant filed with the Court of Appeals a Petition for Certiorari and Prohibition assailing the preliminary injunction issued by respondent judge.[10]

In the meantime, NSSC filed with the trial court a Motion to Enforce Writ of Preliminary Injunction.[11] Complainant, on the other hand, filed a Manifestation and Motion to Cancel or Hold Proceedings in Abeyance.[12] Respondent judge resolved both motions on July 24, 2002, granting NSSC's Motion to Enforce Writ of Preliminary Injunction.[13]

The Court of Appeals promulgated its decision[14] also on July 24, 2004, finding that the trial court committed grave abuse of discretion in issuing the writ of preliminary injunction. The appellate court also observed:

> It is worthy to note that public respondent issued an Order dated March 11, 2002 granting a temporary restraining order for a period of 20 days without requiring private respondents to issue any bond at all notwithstanding Rule 58[,] Section 4 (b) of the Rules of Court, and this compelled petitioners to file an Urgent motion to Fix Bond for Plaintiff/Applicant and Approve/Admit Defendant's Counterbond with Prayer to Lift TRO dated March 12, 2002.
>
> On[e] final point. We further agree with petitioners' observation that public respondent issued an Order dated March 1, 2002 setting the application for a Temporary Restraining Order for hearing, notwithstanding the fact


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> that private respondents were not applying for a temporary restraining order in their complaint, and to correct the irregularity, private respondents filed an Amended complaint on March 6, 2002 inserting the prayer for an application of a Temporary Restraining Order, on which date, the Court issued an Order admitting the Amended complaint. This blatant irregularity committed by the court a quo cannot be left unnoticed.[15]

Hence, complainant filed the instant complaint against respondent judge for serious misconduct, gross ignorance of the law, manifest partiality and grave abuse of discretion. It alleges that respondent judge has exhibited manifest partiality toward NSSC, as can be gleaned from the orders he issued in connection with Civil Case No. 2002-058 and from the statements he made during the hearings on the temporary restraining order and preliminary injunction.[16]

Respondent judge denied the charges against him. He justified his order setting a summary hearing on the issuance of a temporary restraining order by citing the caption of the complaint which stated that it was for "breach of contract, damages, with preliminary injunction and temporary restraining order." Respondent judge construed the same to mean that the plaintiff therein expressly applied for a temporary restraining order. He also pointed out that the complaint included a general prayer "for such other relief just and equitable," and that the material allegations in the body of the complaint asked not only for a preliminary injunction but also for a temporary restraining order. Respondent judge also denied that he argued for the plaintiff during the hearing on March 8, 2002. He said that the questions he propounded during the hearing were merely clarificatory which is allowed by the Rules. Respondent judge also stated that he acted within the bounds of Rule 58 of the 1997 Rules of Civil Procedure when he issued the temporary restraining order because he issued the same only after notice and hearing the parties. He argued that Sec. 2(b) of Rule 58 does not prohibit the issuance of a temporary restraining order without bond. Besides, he later required the plaintiff to post a bond of one million pesos (P1,000,000.00) as a condition for the issuance of the writ of preliminary injunction. Respondent judge submitted that the issuance of a temporary restraining order and the non-requirement of bond did not amount to a violation of the Code of Judicial Conduct because he was never motivated by bad faith, but rather, on his best assessment of facts, to maintain the status quo.[17]

The Office of the Court Administrator (OCA) found respondent judge guilty of grave abuse of discretion and recommended a fine of twenty thousand pesos (P20,000.00), with warning that a repetition of the same or similar acts shall be dealt with more severely.

We agree with the recommendation of the OCA as we find respondent judge's actions to constitute grave abuse of authority.

First, respondent judge ordered a hearing on the issuance of a temporary restraining order although it was not prayed for in the complaint. We are not impressed with respondent judge's argument that the caption and the body of the complaint showed an intent to include a prayer for a temporary restraining order. Nowhere in the allegations in the complaint was it shown that great or irreparable injury would result to the plaintiff, NSSC, pending hearing on the preliminary injunction. Under Section 5, Rule 58 of the 1997 Rules of Civil Procedure, a temporary restraining order may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard. In addition, Section 4(a) of Rule 58 of the Rules of Court is clear with regard to the procedure to be followed in the issuance of writs of preliminary injunction, i.e., a preliminary injunction or temporary restraining order may be granted only when the application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded.[18] We note that the relief sought by NSSC in the original complaint consisted mainly of its reinstatement as dealer of Nissan vehicles and spare parts in Northern Mindanao, and the termination of the dealership agreement between UMC and NICAD. NSSC did not allege facts

to support an urgent need to issue a temporary restraining order to prevent any great or irreparable injury that it might suffer while the preliminary injunction is being heard. In one case, the Court penalized a judge who awarded reliefs to plaintiffs without any showing that such reliefs were applied for.[19]

Second, respondent judge issued the temporary restraining order without requiring the plaintiff to post a bond. Sec. 4, Rule 58 of the 1997 Rules of Civil Procedure states:

> Sec. 4. Verified application and bond for preliminary injunction or temporary restraining order. — A preliminary injunction or temporary restraining order may be granted only when:
>
> (a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and
>
> (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.
>
> x x x

While Section 4(b) of Rule 58 gives the presiding judge the discretion to require a bond before granting a temporary restraining order, the Rules did not intend to give the judge the license to exercise such discretion arbitrarily to the prejudice of the defendant. Certainly, each member of the Bench is not a depository of arbitrary power, but a judge under the sanction of law.[20] The bond under Rule 58 is intended to pay all the damages which the party or person against whom the temporary restraining order or injunction is issued may sustain by reason thereof should the court finally decide that the applicant was not entitled thereto. Hence, it follows that unless it appears that the enjoined party will not suffer any damage, the presiding judge must require the applicant to post a bond, otherwise the courts could become instruments of oppression and harassment.

It is worthy to note that prior to the effectivity of the 1997 Rules of Civil Procedure, no bond was required for the availment of a temporary restraining order. However, the present Rules now regulate the issuance of temporary restraining orders, not only by requiring a hearing, but also by imposing a bond on the applicant to prevent the abuse of this relief by litigants. As explained by Remedial Law expert Justice Florenz D. Regalado:

> Under this amended section, a temporary restraining order has been elevated to the same level as a preliminary injunction in the procedure, grounds and requirements for its obtention. Specifically on the matter of the requisite bond, the present requirement therefor not only for a preliminary injunction but also for a restraining order, unless exempted therefrom by the court, puts to rest a controversial policy which was either wittingly or unwittingly abused. Heretofore, no bond was required for the issuance of a temporary restraining order, except in labor cases brought to the Supreme Court on certiorari from a decision of the National Labor Relations Commission where a monetary award was granted, in which case the policy of the Supreme Court was to require a bond equivalent to the monetary award or benefits granted as a condition for the issuance of a temporary restraining order. The exemption from bond in other cases, plus the fact that no hearing was required, made a temporary restraining order a much sought relief for petitioners.[21]

The temporary restraining order issued by respondent judge in Civil Case No. 2002-058 effectively enjoined the defendants therein, UMC and NICAD, from doing business as dealer of Nissan vehicles in Northern Mindanao. It does not require deep thinking to realize the losses that these companies will suffer if the court orders them to freeze operations. Not only will they be deprived of potential earnings from sales but they will also have to expend for their overhead even if they are not able to do business. Any fair judge would require the plaintiff in

such case to ensure compensation to the defendant if it is later found that the former is not entitled to the injunction. But not respondent judge. He even rejected complainant's motion to fix the plaintiff's bond in Civil Case No. 2002-058, although complainant, as defendant therein, had clearly manifested its willingness to post a counterbond. We cannot consider such error on the part of respondent judge as mere error in judgment. We agree with the findings of the OCA, thus:

> From the foregoing, it is very evident that respondent committed grave abuse of discretion when he issued an Order dated March 1, 2002 setting the application for a Temporary Restraining Order for hearing notwithstanding the fact that the plaintiffs (NSSC) were not applying for a temporary restraining order in their complaint. The alleged irregularity was later on corrected when the plaintiffs filed an Amended Complaint on March 6, 2002 by inserting the prayer for an application [for] Temporary Restraining Order which the Court admitted on [the] same day.
>
> In the case at bar, the errors committed by the respondent were not honest mistakes in the performance of his duties. There was no urgency nor any irreparable injury which would require the issuance of a Temporary Restraining Order and/or Preliminary Injunction in favor of the plaintiffs. As correctly pointed out by the Court of Appeals in its Decision dated July 24, 2002 the defendants (UMC) had already terminated its dealership agreement with the plaintiffs (NSSC) as early as October 30, 2001 on clear grounds of failure to pay its financial obligations, and, thus, the latter (NSSC) were no longer entitled to avail of the remedy of injunction as the act to be prevented by the issuance thereof had long been consummated.
>
> As for the rest of the charges, we find that the complainant failed to adduce evidence in support of the same.

As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although said acts may be erroneous. It is true that a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreetness and due care in the performance of his official functions.[22] Indeed, all members of the Bench are enjoined to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[23] Respondent judge's actions with respect to the issuance of the temporary restraining order in Civil Case No. 2002-058 failed to live up to such high standards of judicial conduct.

IN VIEW WHEREOF, respondent judge is ordered to pay a FINE of TWENTY THOUSAND PESOS (P20,000.00) and WARNED that commission of the same or similar acts shall be dealt with more severely.

**SO ORDERED.**

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.
Tinga, J., out of the country.

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[1] Rollo, pp. 34-45.

[2] Rollo, p. 47.

[3] Rollo, pp. 48-58.

[4] Rollo, pp. 121-A - 122.

[5] Rollo, pp. 123-124.

[6] Rollo, p. 128.


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[7] Rollo, p. 297.

[8] Rollo, pp. 298-306.

[9] Rollo, pp. 309-310.

[10] Rollo, pp. 311-338.

[11] Rollo, pp. 347-349.

[12] Rollo, pp. 350-357.

[13] Rollo, pp. 360-362.

[14] Rollo, pp. 363-372.

[15] Rollo, p. 371.

[16] Rollo, pp. 1-10.

[17] Comment, Rollo, pp. 390-400.

[18] Rivera vs. Mirasol, A.M. No. RTJ-04-1885, July 14, 2004 (434 SCRA 315).

[19] See Cruz vs. Ubiadas, A.M. No. RTJ-03-1768, May 24, 2004 (429 SCRA 62).

[20] Canon 18, Canons of Judicial Ethics.

[21] Regalado, Remedial Law Compendium Vol. I, Sixth Revised Edition, pp. 650-651.

[22] Rivera vs. Mirasol, A.M. No. RTJ-04-1885, July 14, 2004 (434 SCRA 315).

[23] Rule 2.01, Canon 2, Code of Judicial Conduct.

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