SOCORRO ABELLA SORIANO AND SABINO PADILLA, JR., PETITIONERS, VS. HONORABLE COURT OF APPEALS, HON. DAVID C. NAVAL AND DEOGRACIAS REYES, RESPONDENTS.

G.R. No. 100633. August 28, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Cases

We decide the two petitions jointly.

G.R. No. 100633 is an appeal[1] via certiorari interposed by Socorro A. Soriano and her counsel, Atty. Sabino Padilla, Jr. (hereafter, Atty. Padilla) from the decision of the Court of Appeals[2] that affirmed the following orders of the Regional Trial Court, Naga City[3]:

> "(a) Order dated December 16, 1988, denying petitioner's urgent ex-parte motion for restraining order;
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> "(b) Order dated January 23, 1989 denying petitioner's motion to inhibit;
>
> "(c) Order dated July 12, 1989 ordering the respondents to pay the deficiency in the docket fees paid by them;
>
> "(d) Orders dated September 13 and 15, 1989 denying petitioner's Omnibus Motion for Reconsideration.
>
> "(e) Order dated September 25, 1989 directing petitioner Atty. Sabino Padilla, Jr. to show cause why he should not be cited for contempt; and
>
> "(f) Order dated February 9, 1990 denying petitioner's ex-parte motion to rest; declaring petitioner in default; and resetting the scheduled promulgation of judgment on the charge of direct contempt against Atty. Padilla, Jr. with a warning that should he fail to appear he would be ordered arrested pursuant to the provisions of the rules."[4]

and which decision annulled the orders of the Regional Trial Court[5] admitting respondents' (Deogracias and Rosalina Reyes) supplemental complaint.

G. R. No. 101550 is a petition for review on certiorari initiated by Deogracias and Rosalina Reyes assailing the same decision of the Court of Appeals insofar as it annulled the order of the Regional Trial Court[6] admitting their supplemental complaint on the ground that the trial court should not have admitted the same as it did not merely "supplement" but entirely substituted the original pleading.[7]

The Facts

On October 27, 1988, Deogracias R. Reyes and Rosalina N. Reyes (hereafter, "Deogracias" and "Rosalina") filed with the Regional Trial Court, Naga City[8] a complaint against Socorro Abella-Soriano (hereafter "Socorro")[9] for "declaration and recognition of real right under an implied contract of services, reformation of instrument and damages."

The complaint alleged two causes of action.[10]

First, Deogracias and Rosalina pleaded that they were employed by Socorro as manager and administrative assistant of her property and real estate in 1968.[11] As "payment for their services," in 1973, Socorro gave Deogracias and Rosalina one apartment unit[12] to use as their dwelling for the duration of their lifetime. A token monthly rental of one hundred fifty pesos (P150.00) was imposed on them to enable them to supposedly keep their self-respect.[13] In the same building, there existed a unit which Deogracias and Rosalina improved and converted into a pub and restaurant[14] at a cost of four hundred fifty thousand pesos (P450,000.00). For the use of the premises, Socorro collected rent from Deogracias and Rosalina in the token amount of one thousand five hundred pesos (P1,500.00) a month supposedly for the main purpose of enabling them "to keep their self respect."[15] From 1968 to 1987, Deogracias and Rosalina were able to sell and dispose of all the lots in the three residential subdivisions[16] owned by Socorro, amounting to about ten million pesos (P10,000,000.00). As real estate manager and administrative assistant, they were also able in the course of twenty years to find qualified tenants for Socorro's commercial buildings. They supervised the construction and maintenance of Socorro's property and collected rent on behalf of and for the interest of Socorro. Despite all these efforts, on October 17, 1988, Socorro gave Deogracias and Rosalina notice to vacate the two units at No. 67 Elias Angeles St., Naga City.[17]

Deogracias and Rosalina averred that Socorro agreed to allow them to use the two units for the duration of their lifetime as compensation for their services.[18] By now ejecting them from the premises, Socorro reneged on her obligation.[19]

Second, Deogracias and Rosalina were the owners of two (2) commercial lots with improvements.[20] On May 28, 1986, Deogracias and Rosalina became indebted to Socorro in the amount of six hundred thirty eight thousand six hundred thirty five pesos and thirty six centavos (P638,635.36). The parties agreed that to pay for the debt, Deogracias and Rosalina were to sell the two (2) commercial lots for two million and five hundred thousand pesos (P2.5M) and deliver part of the proceeds of the sale to Socorro. While looking for a buyer, Deogracias and Rosalina conveyed the property to Socorro by way of first mortgage. Instead of a real estate mortgage, Socorro prepared two (2) documents, a "deed of absolute sale"[21] covering Deogracias and Rosalina's property and a "memorandum of agreement."[22] Due to the ascendancy of Soccorro over them and also because of Socorro's repeated assurance that the documents had the same effect as a real estate mortgage, Deogracias and Rosalina signed the same. Socorro presented the "deed of absolute sale" to the register of deeds of Naga City and as a consequence TCT Nos. 9388 and 9424 were released in her favor. It was only in September 1988, that Deogracias and Rosalina discovered that they were deprived of the ownership of their property.[23] Thus, Deogracias and Rosalina pray that their true intention of entering into a real estate mortgage and not an absolute sale be given effect, that the "deed of absolute sale" and "memorandum of agreement" be declared void and that the T.C.T.s issued in Socorro's name be canceled and new T.C.T.s be issued in favor of Deogracias and Rosalina.[24]

On October 28, 1988, Deogracias and Rosalina paid the filing fee of four hundred forty pesos (P440.00)[25] and legal research fee of ten pesos (P10.00).[26] The computation of the filing fee was based on the following amounts:[27]

> "1. P100,000.00 representing the income of the property under litigation received by the defendants from its tenants and which the plaintiffs prayed to be returned and refunded to them;
>
> "2. P50,000.00 moral damages;
>
> "3. P10,000.00 exemplary damages;
>
> "4. P50,000.00 attorney's fees.

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> "The total of which amounted to P210,000.00."

On November 29, 1988, Socorro filed a motion to dismiss the complaint on the ground that the first cause of action was barred by the pendency of an ejectment case between the same parties over the same premises and that the second cause of action was premature.[28]

On December 8, 1998, the Carmelite Sisters on behalf of their benefactress, Socorro, filed with the trial court an urgent ex-parte motion for restraining order.[29] The motion prayed that the trial court immediately issue an ex-parte restraining order commanding private respondents to "desist from entering the vacant apartments of the building subject of the case or from urging the tenants thereof to stop paying their rentals to the defendant (Socorro)."

The Carmelite Sisters talked to respondent Judge Naval in his chambers and requested him to immediately act on Socorro's urgent ex-parte motion for a restraining order. Judge Naval told the Carmelite Sisters that he could not issue the ex-parte restraining order because a Supreme Court administrative circular required a hearing with notice to the adverse party. To this statement, Sister Margaret Mary retorted, "Why would Atty. Padilla (Socorro's counsel, Atty. Sabino Padilla, Jr.) ask for an ex-parte restraining order when according to you that is prohibited by an order or circular of the Supreme Court? Do you mean Atty. Padilla does not even know that there is such an order or circular, when he has a brother in the Supreme Court (Associate Justice Teodoro Padilla)."[30]

On December 16, 1988, the trial court denied Socorro's urgent ex-parte motion for a restraining order. The trial court ruled that the issue was whether or not petitioner Socorro may be restored to the possession of the property, which she claimed she was deprived of by means of force, threat and intimidation. According to the trial court, this is a matter which falls within the jurisdiction of the Municipal Trial Court,[31] not the Regional Trial Court.[32]

On January 16, 1989, the trial court granted Socorro's motion to dismiss with respect to Deogracias and Rosalina's first cause of action but denied the same insofar as the second cause of action was concerned.[33]

On the same day, January 16, 1989, Socorro, through counsel, Atty. Padilla, filed a motion to inhibit Judge Naval praying that the ends of justice would best be served if the case was re-raffled to another judge. Basically, the grounds cited were: First, while still a law practitioner and politician, Judge Naval was a frequent customer of the restaurant owned by Deogracias and was a good friend of his. Second, Judge Naval was also a close friend of Rosalina and Deogracias' attorney, Atty. Dennis B. Recon.[34]

On January 23, 1989, the trial court denied Socorro's motion to inhibit. We quote the trial court's order:[35]

> "The factual bases of Defendant's motion to inhibit are not true.
>
> "This Presiding Judge while still a law practitioner and politician, was NOT a frequent customer of the Rey-Ves Pub and Restaurant. To the best of his recollection, this Presiding Judge has eaten and drunk (sic) in said Pub and Restaurant for not more than five (5) times since then until the present and has not had any personal talk with either or both plaintiffs-spouses. This Presiding Judge has never become a `good friend' or even a friend of said spouses.
>
> "Atty. Dennis B. Recon is considered by this Presiding Judge as a friend, just like any other lawyer known to him and appearing before him, and just like counsel for Defendant, Atty. Sabino Padilla, Jr. This Presiding Judge did not notice any one of the three Regional Trial Judges assigned in Pili, Camarines Sur to be present in the court room during the last hearing herein on December 16, 1988, although after the hearing, this Presiding Judge met Hon. Nilo Malanyaon, Presiding Judge of RTC Branch 32, Pili, Camarines Sur, at the lobby of the Naga City Hall of Justice conferring with Hon. Gregorio A. Manio, Presiding Judge, Branch 19, Naga City about the Christmas Party of the entire Court personnel which would be held at 5:30 o'clock that afternoon of

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December 16.

"The inhibition of this Presiding Judge would not have been a problem had Defendant's counsel filed his motion before this Court had refused to issue ex parte a restraining order despite strong representations therefor by three (3) Sisters of Charity and their Mother Superior, allegedly upon instructions of Counsel for the Defendant. To grant the `motion to inhibit' at this stage of the proceedings when this Court, after hearing, has already denied defendant's motion for issuance of a restraining order and writ of preliminary injunction, and has already partially denied defendant's motion to dismiss, may create a bad precedent, and may even adversely affect the integrity of the bar and of the bench because the said Sisters of Charity impressed upon this Presiding Judge not to be apprehensive in issuing the restraining order ex parte as the Supreme Court will sustain it, their counsel being a brother of a Justice of the Supreme Court.

"This Presiding Judge believes that he is competent to hear this case and to render judgment which is fair and just to both parties.

"WHEREFORE, defendant's motion `to inhibit' is hereby DENIED.

"SO ORDERED.

"Given in Chambers, this 23rd day of January 1989, at the City of Naga, Philippines."

On April 17, 1989, Deogracias and Rosalina filed a "motion to admit attached supplemental complaint."[36] The supplemental complaint pleaded[37]:

"2. That on March 30, 1989, subsequent to the filing of the above-entitled case and conformably with the true agreement of the parties herein in their Memorandum of Agreement which they acknowledged before Notary Public Manuel M. Rosales on 23 June 1986 (Annex `C', Complaint) and within the `three (3) years' period provided therein, the herein plaintiffs tendered to the defendant the amount of SIX HUNDRED THIRTY-EIGHT THOUSAND, SIX HUNDRED THIRTY FIVE PESOS and THIRTY SIX CENTAVOS, (P638,635.36) Philippine Currency, as payment to the latter of their (Plaintiffs') obligation to herein defendant;

xxx xxx xxx xxx

"5. That the failure and/or refusal of the defendant to accept said tender of payment to her by the plaintiffs is absolutely without just cause, and which is clearly a move on her part to let the 3-year period provided in their Memorandum of Agreement (which will expire on May 28, 1989) elapse and to invoke it to stonewall the recovery by the plaintiffs from her of the former's 9-door commercial building at Concepcion Grande, Naga City."

On April 28, 1989, the trial court admitted Deogracias' and Rosalina's supplemental complaint.[38]

On May 22, 1989, Socorro moved to dismiss the supplemental complaint.[39]

On July 6, 1989, the trial court denied Socorro's motion to dismiss the supplemental complaint.[40]

On July 12, 1989, the trial court ordered Deogracias and Rosalina to pay a deficiency in the docket fees in the amount of one thousand seven hundred twelve pesos (P1,712.00).[41]

On August 3, 1989, Socorro moved for an extension to file a responsive pleading to the supplemental complaint and to reset pre-trial.

On August 7, 1989, Deogracias and Rosalina complied with the order of July 12, 1989, and paid the additional filing fee.[42]

On August 11, 1989, the trial court granted Socorro's motion for an extension of time to file a responsive pleading

and also granted the same with respect to the motion to reset pre-trial.

On August 18, 1989, Socorro again moved for another extension of time to file a responsive pleading and for the resetting of the pre-trial.

The trial court granted the second motion and gave Socorro an extension of five (5) days.

On August 23, 1989, Socorro again moved for another extension of time to file responsive pleading and to reset pre-trial. The trial court has not acted on the motion.

On August 26, 1989, Socorro's counsel, Atty. Padilla filed an "omnibus motion for reconsideration of various orders of the respondent court."[43]

On September 3, 1989, Deogracias and Rosalina filed an opposition to Socorro's omnibus motion, moved to strike out the motion and moved to declare Socorro in default with respect to the supplemental complaint.[44]

On September 13[45] and 15, 1989,[46] the trial court denied Socorro's "omnibus motion for reconsideration."

On September 25, 1989, the trial court directed Socorro's counsel, Atty. Padilla to show cause why he should not be cited for contempt of court.[47]

Forthwith, on October 9, 1989, Socorro filed with the trial court an opposition to Deogracias' and Rosalina's motion to declare her in default as to the supplemental complaint[48] and an answer to the supplemental complaint.[49]

On October 23, 1989, the trial court denied Deogracias' and Rosalina's motion to declare petitioner in default and admitted Socorro's answer to the supplemental complaint.[50] Pre-trial was reset to December 15, 1989. The court instructed the parties to file their pre-trial briefs three (3) days before the scheduled pre-trial.

On December 15, 1989, only Deogracias, Rosalina and their counsel appeared during the pre-trial conference. The trial court postponed the pre-trial since there was no showing that Socorro and Atty. Padilla were notified thereof. Subsequently, Atty. Padilla admitted receipt of notice but reasoned that he received such only on the very same date of the pre-trial.[51]

On January 5, 1990, the same incident occurred and pre-trial was re-set. Atty. Padilla claimed that they did not appear during the scheduled pre-trial since they received notice thereof five (5) days after.[52]

On January 17, 1990, Socorro and Atty. Padilla were served with notice that pre-trial and promulgation of judgment on the contempt charge against Atty. Padilla was set on February 9, 1990.[53]

On February 2, 1990, Socorro, through Atty. Padilla, mailed her ex-parte motion to reset the scheduled hearing.[54] The trial court received the motion on February 7, 1990.[55]

On February 9, 1990, only Deogracias and Rosalina and their counsel appeared before the court. The court declared Socorro in default. The court granted the motion to reset the hearing for the promulgation of judgment on the charge of direct contempt on February 27, 1990, with a warning that should Atty. Padilla fail to appear during the scheduled hearing, he would be ordered arrested.[56]

On February 19, 1990, Atty. Padilla was served with notice of the scheduled promulgation of judgment on the charge of direct contempt.

On February 27, 1990, Atty. Padilla did not appear before the court. The court appointed a counsel-de-oficio for Atty. Padilla, promulgated judgment against him, found him guilty of direct contempt and sentenced him to suffer the penalty of imprisonment for five (5) days and to pay a fine of one hundred pesos (P100.00).[57]

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On March 12, 1990, Socorro and Atty. Padilla filed with the Court of Appeals a petition for certiorari and mandamus with temporary restraining order. Socorro assailed the following orders of Judge Naval:[58]

First, his insistence on exercising jurisdiction over the case notwithstanding Deogracias' and Rosalina's failure to pay the correct filing fee on their amended complaint. Second, his admission of Deogracias' and Rosalina's amended complaint which they termed as a "supplemental complaint", despite the fact that it pleaded a cause of action directly contrary to that stated in the original complaint.[59] Third, his refusal to issue an ex-parte restraining order to restrain Deogracias and Rosalina from seizing possession of the property subject of the case on the ground that he was prohibited from doing so by a certain Supreme Court Circular and on the ground that the court a quo did not have authority to decide whether Deogracias and Rosalina forcibly entered and seized occupation of the property in litigation as such issue fell under the jurisdiction of the municipal trial court, it being a question of "forcible entry and unlawful detainer." Fourth, his refusal to inhibit himself from hearing the case. Fifth, his unreasonable and violent reaction towards a motion for reconsideration filed by Socorro and Atty. Padilla, which motion for reconsideration pointed out that:

> (1) the insulting accusation Judge Naval hurled at Atty. Padilla was not supported by the facts;
>
> (2) it was Judge Naval's version of the facts that was obviously false and untrue;
>
> (3) that Judge Naval has an "unusual interest" in holding on the case despite the court's lack of jurisdiction over it.

Sixth, his citing of Atty. Padilla for contempt of court. Seventh, his order for the arrest and incarceration of Atty. Padilla for direct contempt of court.

On June 26, 1991, the Court of Appeals decided:[60]

> "IN VIEW OF THE FOREGOING PREMISES, the instant petition is hereby DISMISSED except the Orders dated April 28, 1989 and July 6, 1989 which are granted. The Writ of Injunction dated June 18, 1990 is hereby DISSOLVED. Costs against petitioners.
>
> "SO ORDERED."

On August 17, 1991, Socorro and Atty. Padilla filed with the Supreme Court a petition assailing the aforequoted decision.[61]

On July 25, 1991, Deogracias and Rosalina filed with the Court of Appeals a motion for partial reconsideration[62] of its decision of June 26, 1991, assailing the Court of Appeals annulment of the order of the trial court admitting their supplemental complaint.

On August 21, 1991 the Court of Appeals denied Deogracias' and Rosalina's motion for partial reconsideration.[63]

On October 16, 1991, Deogracias and Rosalina likewise filed with the Supreme Court a petition for review on certiorari assailing the aforequoted decision of the Court of Appeals insofar as it annulled the order of the Regional Trial Court admitting their supplemental complaint.[64]

On November 6, 1991, the Court resolved to consolidate the two petitions.[65]

The Issues

- Whether the trial court gravely abused its discretion in refusing to restrain or to remedy the forcible seizure by the plaintiffs of the property subject of the litigation.

- Whether the trial court gravely abused its discretion in refusing to order the payment of the correct filing fee and upon failure to pay the same, to dismiss the case.

- Whether the trial court gravely abused its discretion in refusing to inhibit.

- Whether the trial court gravely abused its discretion in admitting the "supplemental complaint," with a theory directly contrary to the original complaint and in not dismissing it upon motion of defendant.

- Whether the trial court gravely abused its discretion and acted in excess of jurisdiction in finding Atty. Sabino Padilla, Jr. guilty of "direct contempt."

- Whether the Court of Appeals acted with grave abuse of discretion in sanctioning the foregoing orders of the trial court (except the Order admitting the supplemental complaint).[66]

The Court's Ruling

We find the petitions without merit except as hereafter stated. We shall discuss the issues in seriatim.

Effect of Non-Payment of Filing Fees in Full

We agree with the Court of Appeals that when insufficient filing fees were initially paid by Deogracias and Rosalina, there was no intention to defraud the government, hence, the ruling in Manchester Development Corporation v. Court of Appeals[67] does not apply. Deogracias and Rosalina merely paid the amount of the docket fees computed by the Clerk of Court. They were in good faith and relied on the assessment of the Clerk of Court. This is a finding of fact which the Court of Appeals carefully made. In the absence of abuse of discretion, we shall not disturb the same.

In Sun Insurance Office, Ltd. v. Asuncion,[68] the issue was whether or not the court acquired jurisdiction over the case even if the docket fee paid was not sufficient. This Court ruled that since the petitioners did not intend to defraud the government by paying insufficient docket fees, a more liberal interpretation of the rules should apply. In Sun Insurance Office, Ltd., v. Asuncion, private respondent, like Deogracias and Rosalina in the case at bar, demonstrated willingness to abide by the rules by paying the additional docket fees as required. Thus, the Court concluded that the trial court was vested with jurisdiction and consequently stated the following rules:[69]

> "1. It is not simply the filing of the complaint of appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
>
> xxx
>
> "3. Where the trial court acquired jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee, but subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for the determination of the court, the additional filing fee shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional filing fee (underscoring ours)."

In Ng Soon v. Alday,[70] this Court stated that the initial payment of the filing fees corresponding to the estimated amount of the claim is allowed subject to the adjustment of what may be proved later. If what is proved (amount of claims for damages) is less than what is claimed, then a refund may be made; if more, additional fees will be exacted. The rule comes into play when the situation found in Manchester Development Corporation v. Court of Appeals (i.e., intention to defraud the government) is absent.[71]

Non-Admission of the Supplemental Complaint

We find that Deogracias and Rosalina's "supplemental complaint" contains matters entirely different from and even contrary to the cause of action stated in the original complaint. Hence, we agree with the Court of Appeals that the trial court should not admit the same.

In the original complaint, Deogracias and Rosalina assailed as "void ab initio" the memorandum agreement of June 23, 1986, while in the so-called "supplemental complaint", they used as basis the very same memorandum agreement they initially assailed in order to exercise an "option to repurchase" provided for therein. A supplemental complaint is one that:[72]

> "...set(s) forth transactions, occurrences of events which have happened since the date of the pleading sought to be supplemented."

A pleading subsequently filed after an original one which states a totally different cause of action is not a "supplemental pleading" and is not permitted. The rule allowing amendments to a pleading is subject to the general limitation that the cause of action shall not be substantially changed or that the theory of the case shall not be altered.[73]

Non-Issuance of the Ex-Parte Restraining Order

A perusal of the records shows that Socorro's motion for an ex-parte restraining order prayed that the court prohibit Deogracias and Rosalina from entering the vacant apartments of the building subject of the litigation. The issue of whether Judge Naval acted with grave abuse of discretion when he denied the motion has become moot and academic. The parties stipulated that Deogracias and Rosalina already entered the premises in question. Injunction would not lie anymore, as the acts sought to be enjoined had become a fait accompli or an accomplished or consummated act.[74] It is useless to indulge in an academic discussion of a moot question.[75]

Refusal of Judge Naval to Inhibit Himself

Rule 137, Section 1, Revised Rules of Court provides the grounds for the disqualification of judges, to wit:

> "Section 1. Disqualification of judges.- No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> "A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

For any other reason, a litigant may not demand that a judge inhibit himself. Specially so in this case where there is a finding of fact that "respondent judge has not as yet crossed the line that divides partiality from impartiality."[76] Besides, the test for determining the propriety of the denial of a motion to inhibit is whether the movant was deprived of a fair and impartial trial.[77] In this case, there was no such deprivation.

In a string of cases, this Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice.[78]

Charge of Direct Contempt of Court

The Court of Appeals erred when it stated[79] that a certiorari proceeding assailing the judgment of direct contempt was not proper as Atty. Padilla may have appealed therefrom.[80] Rule 71, Section 2, Revised Rules of Court provides: "A person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of certiorari or prohibition (emphasis ours)." This is exactly what petitioners did.

The Court of Appeals also erred when it affirmed the trial court's finding of direct contempt of court against Atty. Padilla. Rule 71, Section 1 of the Revised Rules of Court provides:

> "Section 1. Direct contempt punished summarily - A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court.xxx"

The Court of Appeals affirmed the trial court's judgment on direct contempt on two grounds.[81] We quote[82]:

> "xxx 2. Pursuing relentlessly his design to embarrass this Presiding Judge by claiming in his "Omnibus Motion for Reconsideration" dated August 26, 1989 that this Presiding Judge could not correctly understand the clearly worded Administrative Circular No. 1 of the Supreme Court.
>
> "3. Alleging in disrespectful and insulting manner in his "Omnibus Motion for Recommendation" dated August 26, 1989 the following:
>
> "a. It is respectfully submitted that even a first year law student will readily see that the last sentence of the par. 2-3 above quoted - "Restraining orders or preliminary injunction should not be issued without prior notice and hearing and showing of a clear right thereto" - must be read and understood in the light of the heading and subject being discussed, namely, "Prompt Action on Dilatory Petitions, to Delay Enforcement of Executory Judgments." By no stretch of the imagination can it be interpreted in isolation to mean that Courts had lost their inherent power to issue ex-parte restraining orders.
>
> "And this Court certainly can read and understand just what par. 3-2 of Administrative Circular No. 1 means. (par. 9);
>
> "b. One had a right to assume that this Court was sufficiently acquainted with the principle in Rule 135 of the Rules of Court to the effect that:...(par. 14; (b);
>
> "c. Given the foregoing conduct of this Court, undersigned counsel felt that for reasons known only to the Court it could not really act freely on this Case as it ordinarily would, and therefore a motion to inhibit was probably the best way out of this situation. (par. 14 (b), sub-par. 4);
>
> "d. But the Court obviously took the motion to inhibit in a different light. Not only did it deny the motion; in so doing, it vented its anger at undersigned counsel and the Carmalite Sisters.(par. 15);
>
> "e. They were Carmelite (sic) Sisters, or if their official name is to be used, they were Sisters belonging to the order of Discalced Carmilites. The Sisters or Daughters of Charity, are an entirely different religious congregation. It seems that the Court could not get correctly even this very elementary fact. (par. 16);
>
> "f. Fourthly, even the Court's version is not at all flattering to it. For if that version were to be believed, the Court even went to the extent of allowing the sisters to make representations with it, and improper representations at that, instead of firmly telling the sisters that they were out of bounds and should leave. It is bad enough that a Presiding Judge should allow a lawyer to discuss the merits of a case out of court and without the presence of opposing counsel; that he should allow non-lawyers and non-parties, who have nothing to do with a case, to even discuss them with him is the height of impropriety. (par. 16, sub-par. 4).
>
> "g. All the foregoing circumstances naturally cast serious doubts on the accuracy and truthfulness of the Court's statements above quoted...(par. 17).
>
> "h. What version then is to be believed? With all due respect, it is submitted that the foregoing version of the

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> Carmelite Sisters is to be believed. (par. 18).
>
> "i. When defendant pointed this out in her motion to dismiss and other pleadings, this Court instead of dismissing both the original and the supplemental complaint sought to remedy the irremediable. It refrained from passing on it in ruling on the motion to dismiss; but in a separate order of July 12, 1989, it required the plaintiffs to pay the difference between what they had paid on the original complaint and what they should pay on the "supplemental" complaint. In other words, instead of dismissing the "supplemental" complaint for non-payment of the filing fee, which is all that it could do, the Court went out of its way to save the day for the plaintiffs by giving them an opportunity to pay the correct filing fee and thus retain jurisdiction over the same.
>
> But that is not all. It even gave plaintiffs credit for the inadequate filing fee they paid under their original complaint; (par. 22); and
>
> "j. Hence, if plaintiffs insist on their change of theory, the obvious remedy is not by way of "supplemental" or even "amended" complaint, but by dismissing the original complaint and filing an entirely new one. But of course, that would mean a raffle and plaintiffs apparently do not want to risk having their case fall into another branch or sala.
> "It is respectfully submitted, however, that plaintiffs' obvious desire to keep their case in this particular branch of the court is no excuse for violating the rules. (par. 27). (Underscoring ours)"

After a perusal of the charges of direct contempt of court, we find that Atty. Padilla's innuendoes are not necessarily disrespectful to the court as to be considered contumacious. A lawyer's remarks explaining his position in a case under consideration do not necessarily assume the level of contempt that justifies the court to exercise the power of contempt.[83] Courts must be slow to punish for direct contempt. This drastic power must be used sparingly in cases of clearly contumacious behavior in facie curiae.[84] The salutary rule is that the power to punish for contempt must be exercised on the preservative, not vindictive principle,[85] and on the corrective and not retaliatory idea of punishment.[86] The courts must exercise the power to punish for contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[87]

Snide remarks or even sarcastic innuendoes do not necessarily assume that level of contumely actionable under Rule 71 of the Revised Rules of Court. Judges generally and wisely pass unnoticed any mere hasty and unguarded expression of passion, or at least pass it with simply a reproof. In the natural order of things, when a case is decided, one party wins and another loses, and oftentimes, both sides are equally confident and sanguine. Thus, disappointment is great for the party whose action or view fails. It is human nature that there be bitter feelings which often reach to the judge as the source of the supposed wrong. A judge, therefore, ought to be patient, and tolerate everything which appears as but a momentary outbreak of disappointment.[88]

Lawyers may not be held to too strict an account for words said in the heat of the moment, because of chagrin at losing cases, and that the big way is for the court to condone even contemptuous language.[89] While judges must exercise patience, lawyers must also observe temperate language as well. At this juncture, we admonish all lawyers to observe the following canons of the Code of Professional Responsibility, which read:

> "Canon 8. Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.
>
> "Canon 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."

A lawyer is an officer of the Court,[90] bound by the law. It is a lawyer's sworn and moral duty to help build and not destroy unnecessarily the high esteem and regard towards the courts so essential to the proper administration

of justice.[91]

It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.[92] It is peculiarly incumbent for lawyers to support the courts against "unjust criticism and clamor."[93]

It may happen that counsel possesses a greater knowledge of the law than the judge who presides over the court. It may also happen that since no court claims infallibility, judges may grossly err in their decision. Nevertheless, discipline and self-restraint on the part of the bar even under adverse conditions are necessary for the orderly administration of justice.[94] Malicious attacks on courts have in some cases been treated as libel, in other cases as contempt of court, and as a sufficient ground for disbarment.[95] However, mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated.[96]

This is not to say that courts are above criticism. As a citizen and as an officer of the court, a lawyer may criticize the court. He must do so in a bona fide manner, uberrima fides. A wide chasm exists between fair criticism on the one hand, and abuse and slander of the courts and of the judges thereof on the other.[97] Unnecessary language which jeopardizes high esteem in the courts, or creates or promotes distrust in judicial administration is proscribed.[98]

The Fallo

WHEREFORE, the petition in G. R. No. 100633 is PARTLY GRANTED. The petition in G. R. No. 101550 is DENIED. The decision of the Court of Appeals in CA-G. R. SP No. 20236, is AFFIRMED with MODIFICATION in that the trial court's order finding Atty. Sabino Padilla, Jr. guilty of direct contempt of court and imposing on him imprisonment for five (5) days, and ordering him to pay a fine of one hundred pesos (P100.00) is REVERSED and SET ASIDE. With admonition to the trial court and counsel to observe strictly the strictures of the ethics of the profession.

No costs.

SO ORDERED.
Davide, Jr., C.J., (Chairman), Puno, and Kapunan, JJ., concur.
Ynares-Santiago, J., no part.

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[1] Under Rule 45 of the Revised Rules of Court. Petitioners, however, state that the petition may be considered as a petition for certiorari under Rule 65 in view of what they submit as grave abuse of discretion on the part of the Court of Appeals (Petition for Review on Certiorari, G. R. No. 100633, Rollo, pp. 6-45 at p. 6).

[2] In CA-G. R. SP No. 20236, promulgated on June 26, 1991, Torres, Jr., J., ponente, Francisco and Ynares-Santiago, JJ., concurring.

[3] In Civil Case No. RTC 88-1587, Judge David C. Naval, presiding.

[4] Quoted from the Decision of the Court of Appeals G. R. No. 100633, Rollo, pp. 373-374.

[5] Dated April 28, 1989.

[6] Dated April 28, 1989.

[7] Petition for Review on Certiorari ad Cautelam, G. R. No. 101550, Rollo, pp. 6-20.

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[8] Raffled to Branch 21 thereof (Petition for Review on Certiorari, G. R. No. 100633, Rollo, pp. 6-45, at p. 10).

[9] Docketed as Civil Case No. RTC 88-1587.

[10] Petition, Annex "A", Complaint, CA Rollo, pp. 33-42.

[11] Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at p. 48.

[12] Identified as No. 67 Elias Angeles St., Naga City.

[13] Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at p. 49.

[14] "Rey-ves Pub and Restaurant."

[15] Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at p. 49.

[16] Penafrancia, Villa Sorabella and San Antonio Subdivisions.

[17] Petition for Certiorari, Annex "A", Complaint, Annex "A", G. R. No. 100633, Rollo, p. 57.

[18] Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at p. 50.

[19] Ibid., p. 51.

[20] Consisting of a two-storey six (6) door commercial building with a market value of not less than two million five hundred thousand pesos (P2.5M) situated at Concepcion Grande, Naga City (Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at p. 51).

[21] G. R. No. 100633, Petition for Certiorari, Rollo, p. 58; CA Rollo, p. 44.

[22] Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at p. 52; Petition for Certiorari, G. R. No. 100633, Rollo, p. 59; CA Rollo, p. 45.

[23] Petition for Certiorari, Annex "A", Complaint, G. R. No. 100633, Rollo, pp. 47-56, at pp. 52-54.

[24] Ibid., p. 55.

[25] OR No. 105494 issued by the Regional Trial Court, Naga City.

[26] As per OR No. 200781 issued by the Regional Trial Court, Naga City.

[27] According to the certification issued by Rosario B. Torrecampo (RTC Clerk of Court VI) upon the request of petitioner's counsel, Atty. Sabino Padilla, Jr., dated November 29, 1989 (Petition for Certiorari, Annex "B", Certification, G. R. No. 100633, Rollo, p. 61); CA Rollo, p. 47.

[28] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 376; Petition, Annex "D", Motion to Dismiss, CA Rollo, p. 49.

[29] Petition, Annex "H", Rollo, p. 53.

[30] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 377.

[31] Citing Rule 70, Section 1 of the Revised Rules of Court.

[32] Court of Appeals Decision, G. R. No. 100633, CA Rollo, pp. 373-395, at p. 378; Petition, Annex "K", Order of December 16, 1988, Rollo, p. 56.

[33] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 378; CA Rollo, Petition, Annex "L",

Order of January 16, 1989, CA Rollo, p. 57.

[34] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 378; Petition, citing Motion to Inhibit, CA Rollo, pp. 1-32, at pp. 15-16; Petition, Annex "M", Motion to Inhibit, CA Rollo, p. 58.

[35] Petition, citing Order of the trial court dated January 23, 1989, CA Rollo, pp. 1-32, at pp. 16-17; Petition, Annex "N", Order of January 23, 1989, CA Rollo, p. 59.

[36] Petition, Annex "P", Motion to Admit Attached Supplemental Complaint, CA Rollo, p. 61.

[37] Petition, Annex "P-1", Supplemental Complaint, CA Rollo, p. 62.

[38] Petition, Annex "Q", Order of April 28, 1989, CA Rollo, p. 66.

[39] Petition, Annex "R", Motion to Dismiss Supplemental Complaint, CA Rollo, p. 67.

[40] Petition, Annex "V", Order of July 6, 1989, CA Rollo, p. 71.

[41] Petition, Annex "W", Order of July 12, 1989, CA Rollo, p. 72.

[42] According to the certification issued by Rosario B. Torrecampo (RTC Clerk of Court VI) upon the request of petitioner's counsel, Atty. Sabino Padilla, Jr., dated November 29, 1989 (Petition for Certiorari, Annex "B", Certification, G. R. No. 100633, Rollo, p. 61).

[43] Petition, Annex "X", Omnibus Motion for Reconsideration, CA Rollo, p. 73.

[44] Petition, Annex "Y", Opposition to Omnibus Motion for Reconsideration, CA Rollo, p. 74.

[45] Petition, Annex "BB", Order of September 13, 1989, CA Rollo, p. 80.

[46] Petition, Annex "CC", Order of September 15, 1989, CA Rollo, p. 83.

[47] Petition, Annex "DD", Order of September 25, 1989, CA Rollo, p. 84.

[48] Petition, Annex "EE", Opposition to Motion to Declare Defendant in Default in the Supplemental Complaint, CA Rollo, p. 85.

[49] Dated October 9, 1989, Petition, Annex "FF", Answer to Supplemental Complaint, CA Rollo, p. 86.

[50] Petition, Annex "GG-1", Order of October 23, 1989, CA Rollo, p. 87.

[51] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 385.

[52] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 385.

[53] Petition, Annex "HH", Notice of Hearing, Promulgation of Judgment, CA Rollo, p. 88.

[54] Petition, Annex "II", Ex Parte Motion to Reset, CA Rollo, p. 89.

[55] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 385.

[56] Petition, Annex "JJ", Order of February 9, 1990, CA Rollo, p. 90.

[57] Order of February 27, 1990, CA Rollo, p. 96.

[58] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at pp. 385-387.

[59] According to petitioners, the original complaint alleged that a certain memorandum of agreement was null and void and should be declared as such, while the supplemental complaint subsequently filed by Deogracias and

Rosalina claimed that they exercised their rights under the memorandum of agreement earlier assailed but Socorro refused to comply with her obligations thereunder

[60] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, at p. 395.

[61] Petition for Review on Certiorari, docketed as G. R. No. 100633, Rollo, pp. 6- 45.

[62] Partial Motion for Reconsideration, CA Rollo, pp. 179-184.

[63] G. R. No. 101550, Rollo, p. 48.

[64] Petition for Review on Certiorari ad Cautelam, G. R. No. 101550, Rollo, pp. 6-20.

[65] G. R. No. 101550, Rollo, p. 50. On May 18, 1992, the Court gave due course to both petitions, Rollo, p. 93.

[66] G. R. No. 101550, Rollo, pp. 137-167, at pp. 151-152.

[67] 159 SCRA 569 [1988].

[68] 170 SCRA 274, 285 [1989].

[69] Supra, p. 285.

[70] 178 SCRA 221 [1989].

[71] Supra, Note 66, p. 227.

[72] Rule 10, Section 6, 1997 Rules of Civil Procedure, as amended.

[73] Superclean Services Corporation v.Court of Appeals, 327 Phil. 786, 795 [1996].

[74] Aznar Brothers Realty Corporation v. Court of Appeals, 327 SCRA 359 [2000].

[75] Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor, 312 SCRA 104, 114 [1999].

[76] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395, p. 391.

[77] Arthur Te v. Court of Appeals, G. R. No. 126746, November 29, 2000.

[78] Joseph Estrada v. Gloria Macapagal-Arroyo, G. R. No. 146738, March 2, 2001.

[79] Court of Appeals Decision, G. R. No. 100633, Rollo, pp. 373-395 at p. 393.

[80] Rule 71, Section 2, Revised Rules of Court provides: "The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of certiorari or prohibition." (underscoring ours).

[81] The Court of Appeals rejected the first ground (i.e. "1. Causing the "Discalced Carmelite Sisters" to unduly exert pressure on this Presiding Judge to issue ex-parte the restraining orders prayed for in his motion dated December 8, 1988") as basis for direct contempt.

[82] Petition, Annex "DD", Order of September 25, 1989, CA Rollo, p. 84.

[83] Oclarit v. Paderanga, G. R. No. 139519, January 24, 2001.

[84] Regalado, Remedial Law Compendium, Vol. 1, Sixth Revised Edition, 1997, p. 803; de Guia v. Guerrero, 186 SCRA 339 [1990].

[85] Commissioner of Immigration v. Cloribel, 127 Phil. 716 [1967].

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[86] Nazareno v. Barnes, 220 Phil. 451, 463 [1985]; Pacuribut v. Lim, Jr., 341 Phil. 544, 548 [1997].

[87] Austria v. Masaquel, 127 Phil. 677, 690-691 [1967]; Nazareno v. Barnes, supra, Note 86; Angeles v. Gernale, Jr., 340 Phil. 173 [1997].

[88] People v. Godoy, 312 Phil. 977, 994 [1995].

[89] In re: Gomez, 43 Phil. 376 [1922].

[90] City Sheriff, Iligan City v. Fortunado, 351 Phil. 430, 437 [1998].

[91] People v. Carillo, 77 Phil. 572, 580 [1946]; Eternal Gardens Memorial Park Corp. v. Court of Appeals, 355 Phil. 369, 380 [1998]; Tiomico v. Court of Appeals, 304 SCRA 216 [1999]; Pepsi-Cola Products Phils., Inc. v. Court of Appeals, 359 Phil. 859 [1998].

[92] Malcolm's Legal and Judicial Ethics, 1949 ed., p. 161.

[93] Tiongco v.Aguilar, 310 Phil. 652, 660 [1995].

[94] Malcolm's, op. cit. p. 162.

[95] Malcolm's, op. cit. p. 170.

[96] In re: Sotto, 82 Phil. 595, 600 [1949].

[97] Tiongco v. Aguilar, supra, Note 93. citing the first canon of legal ethics.

[98] Rheem of the Philippines v. Ferrer, 20 SCRA 441, 445 [1967].

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