

MERCEDES R. GOCHAN, ALFREDO R. GOCHAN, ANGELINA R. GOCHAN HERNAEZ, MA. MERCED R. GOCHAN GOROSPE, CRISPO R. GOCHAN JR. AND MARLON R. GOCHAN, PETITIONERS, VS. VIRGINIA GOCHAN, LOU...

G.R. No. 143089. February 27, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Allegations and perceptions of bias from the mere tenor and language of a judge is insufficient to show prejudgment. Allowing inhibition for these reasons would open the floodgates to abuse. Unless there is concrete proof that a judge has a personal interest in the proceedings, and that his bias stems from an extra-judicial source, this Court shall always commence from the presumption that a magistrate shall decide on the merits of a case with an unclouded vision of its facts.[1]

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the January 28, 2000 Decision [2] and the May 2, 2000 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 54985. The decretal portion of the Decision reads as follows:

“WHEREFORE, premises considered, the petition is GRANTED. Accordingly, the Order dated 13 August 1999 denying petitioners’ Motion for Inhibition and the Order dated 20 August 1999 denying the Motion for Reconsideration are hereby nullified and respondent Judge is hereby inhibited from further sitting in Civil Case No. CEB-21854 entitled ‘Gochan et. al. vs. Gochan, et al.’”[4]

The assailed Resolution denied petitioner’s Motion for Reconsideration.[5]

The Facts

The facts of the case are summarized by the Court of Appeals in this wise:

“There is no dispute as to the antecedent facts that gave rise to the instant petition involving close relatives who are either aunties, nieces and nephews or first-cousins.

“On 03 April 1998, private respondents filed a Complaint for Specific Performance and Damages against petitioners. The case was raffled to respondent Judge Dicdican and docketed as Civil Case No. CEB-21854.

“On 26 May 1998, petitioners filed their Answer with Counterclaim and affirmative defenses.

“On 07 August 1998, before pre-trial could be conducted, petitioners filed a motion for a hearing on their affirmative defenses some of which are grounds for a motion to dismiss and therefore may be the subject of a preliminary hearing pursuant to Section 6, Rule 16, 1997 RCP. The motion was set for hearing on 11 August 1998.

“In an order dated 11 August 1998, respondent judge denied petitioners’ motion without conducting a hearing. Respondent judge however did not stop with the denial but went on to rule on the merits of the affirmative defenses, stating as follows:

‘[T]he Statute of Frauds does not apply in this case because the contract which is the subject matter of this case is already an executed contract. The Statute of Frauds applies only to executory contracts. x x x. For another, the contention of the defendants that the claims of the plaintiffs are already extinguished by full payment thereof does not appear to be indubitable because the plaintiffs denied under oath the due execution and genuineness of the receipts which are attached as Annexes 1-A, 1- B and 1-C of the defendants’ answer. x x x. Then, still for another, the contention that the Complaint is defective because it allegedly has f[a]iled to implead indispensable parties appears to be wanting in merit because the parties to the memorandum of agreement adverted to in the complaint are all parties in this case. Then the matter of payment of docketing and filing fees is not a fatal issue in this case because the record shows that the plaintiffs had paid at least PhP165,000.00 plus...’

“The above ruling is the subject of a petition for certiorari before this Court docketed as C.A.-G.R. SP No. 49084 which is pending resolution on a motion for [re]consideration. Because of the pendency of this petition, petitioners filed on 28 September 1998 a motion to suspend proceedings. Instead of suspending proceedings, the respondent judge set the case for pre-trial on 09 November 1998, per Order dated 01 October 1998.

“On 05 November 1998, petitioners’ counsel Atty. Rolando Lim filed a motion to reset the pre-trial from 09 November 1998 to 03 December 1998 on the ground that he had to go to Japan because of a previous commitment. Atty. Vicente Espina, who attended the pre-trial to explain Atty. Lim’s absence, manifested to respondent judge that the petitioners were willing to explore the possibility of an amicable settlement. In spite of the absence of handling counsel Atty. Lim and in spite of Atty. Espina’s manifestation of a possible compromise, respondent judge proceeded with and terminated the pre-trial. And in spite of the manifestation of Atty. Espina, respondent judge indicated in the pre-trial order he issued that the ‘possibility (of a compromise) is nil.’

“After the termination of the pre-trial, respondent judge proceeded to hear the evidence of private respondents who presented their first witness on direct examination on 18 January 1999. This first witness was cross-examined by petitioners’ counsel on 22 January 1999. Further hearings were set for 28 and 30 April 1999. On 23 April 1999, petitioners’ counsel Atty. Lim filed an urgent motion praying that the hearing on 28 April be moved to 30 April 1999 on the ground that he had to undergo medical tests and treatment on 27 and 28 April 1999, and that his law partner Atty. Espina would not be able to attend in his behalf because the latter had to attend his brother’s wedding in Kananga, Leyte on 28 April 1999.

“Petitioners’ counsel went to court on 30 April 1999 and was surprised to learn that his motion to reset the hearing on 28 April 1999 was disregarded and that trial proceeded with private respondents’ counsel conducting a re-direct examination of their first witness and presenting their second witness on direct examination. During the hearing on 30 April 1999, respondent judge ordered petitioners’ counsel to conduct the re-cross examination of the first witness and the cross-examination of the second witness. Petitioners’ counsel manifested that he had not read the transcript of stenographic notes taken during the hearing on 28 April 1999 and was therefore not prepared for cross-examination. However, when respondent judge threatened to waive petitioners’ right to examine private respondents’ witnesses, petitioners’ counsel had no choice but to accede to do what he was not prepared for.

“On 05 August 1999, petitioners filed a motion to inhibit respondent judge from further sitting in the case on grounds of partiality, pre-judgment and gross ignorance of the law. The motion was set for hearing on 09 August 1999 at 10:00 A.M.

“In an order dated 13 August 1999, respondent judge denied the motion for inhibition on the ground that petitioners failed to appear to substantiate the motion.

“On 16 August 1999, petitioners filed a motion for reconsideration of the order of denial which the respondent judge likewise denied in his Order dated 20 August 1999, reiterating that petitioners failed to appear during the hearing on the motion.”[6] (Citations omitted)

Ruling of the Court of Appeals

The CA opined that the apprehensions of respondents about the bias or partiality of Judge Dicdican in favor of petitioners were well-founded.[7] It held that the totality of the circumstances showed that he had a glaring animosity towards their case.[8] It further ruled that he had “likewise displayed petulance and impatience in his handling of the case, a norm of behavior inconsistent with the cold neutrality of an impartial judge.”[9]

The CA based its ruling on the following circumstances[10] pointed out by respondents:

- Judge Dicdican denied the Motion to Hear Affirmative Defenses filed by respondents, but in the same Order ruled on its merits without giving them an opportunity to be heard.
- The above Order of the judge was too well-prepared to be extemporaneous, leading respondents to suspect that he was bent on deciding the case in favor of petitioners.
- Without indicating for the record respondents’ objections, Judge Dicdican admitted all exhibits of petitioners and even allowed their witnesses to answer all questions, even if he had not yet resolved the applicability of the Statute of Frauds.
- The judge denied respondents’ requests for postponements, which were reasonable and justified under the circumstances. Further, during the April 28, 1999 hearing, he allowed petitioners to present their witnesses even in the absence of respondents’ counsel. And, knowing that the counsel was absent when those witnesses testified in the previous hearing, the judge forced him to cross-examine them in the subsequent April 30, 1999 hearing.
- During the hearing for respondents’ Motion for Inhibition, the judge started to hear the case before the scheduled time.
- Judge Dicdican issued a Pretrial Order stating that the possibility of a compromise was “nil” despite the pretrial manifestation of respondents’ counsel that the parties were willing to explore the possibility of a compromise.

Hence, this Petition.[11]

The Issues

In their Memorandum,[12] petitioners submit the following issues for our consideration:

- “1. Whether or not the respondents are guilty of forum shopping in filing two petitions for certiorari in the CA based on the same order of Judge Dicdican;
- “2. Whether or not the CA was correct in enjoining Judge Dicdican from sitting in the case at bar on the ground of bias and partiality;
- “3. Whether or not filing of a motion for inhibition on flimsy grounds is not a form of forum shopping.”[13]

Simply stated, the issues in this case are as follows: (1) whether respondents are guilty of forum shopping, and (2) whether Judge Dicdican should have inhibited himself.

The Court’s Ruling

The Petition is meritorious insofar as the second issue is concerned. Judge Dicdican need not inhibit himself.

First Issue:

Forum Shopping

Petitioners argue that respondents should have raised the issue of Judge Dicdican's alleged bias and partiality in their first Petition for Certiorari docketed as CA-GR SP No. 49084, not in the present case docketed in the appellate court as CA-GR SP No. 54985. For filing two Petitions raising the same issues, respondents allegedly split their cause of action and thus became guilty of forum shopping. Petitioners further contend that the elements of *litis pendentia* or *res judicata* are present in the case at bar, because the matter raised in this Petition could have been taken up in the first one.

We disagree. This Court has already definitively ruled on this matter in GR No. 146089.[14] In its Decision, it was confronted with the very same question raised in this Petition. At issue then is whether there was forum shopping in the filing of two Petitions for Certiorari -- one for CA-GR SP No. 49084 and the other for CA-GR SP No. 54985, the precursor of the present Petition.

The Court made a distinction between the two Petitions filed. The first involved the "propriety of the affirmative defenses relied upon by petitioners [herein respondents] in Civil Case No. CEB-21854." [15] The second Petition, which is the subject of the present appeal, "raised the issue of whether or not public respondent Judge Dicdican was guilty of manifest partiality warranting his inhibition from further hearing Civil Case No. CEB-21854." [16]

Below we quote a more important point:

"[T]he two petitions did not seek the same relief from the Court of Appeals. In CA-G.R. SP. No. 49084, petitioners prayed, among others, for the annulment of the orders of the trial court denying their motion for preliminary hearing on affirmative defenses in Civil Case No. CEB-21854. No such reliefs are involved in the second petition, where petitioners merely prayed for the issuance of an order enjoining public respondent Judge Dicdican from further trying the case and to assign a new judge in his stead." [17]

It should be clear that our Decision in GR No. 146089 has become final and executory with the denial [18] of respondents' [herein petitioners'] Motion for Reconsideration therein.

Main Issue:

Inhibition

Although we find that respondents did not commit forum-shopping, still we gave due course to this Petition on the main issue of inhibition. Petitioners argue that the CA erred when it ruled that Judge Dicdican should be inhibited from hearing Civil Case No. CEB-21854 on the ground of bias and prejudice.

A critical component of due process is a hearing before a tribunal that is impartial and disinterested.[19] Every litigant is indeed entitled to nothing less than "the cold neutrality of an impartial judge." All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision were to come from a biased judge.[20] Section 1 of Rule 137 of the Rules of Court provides:

"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." [21]

The Rules contemplate two kinds of inhibition: compulsory and voluntary. The instances mentioned in the first paragraph of the cited Rule conclusively presume that judges cannot actively and impartially sit in a case. The second paragraph, which embodies voluntary inhibition, leaves to the discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.

To be sure, judges may not be legally prohibited from sitting in a litigation.[22] But when circumstances reasonably arouse suspicions, and out of such suspicions a suggestion is made of record that they might be induced to act with prejudice for or against a litigant, they should conduct a careful self-examination.[23] Under the second paragraph of the cited Section of the Rules of Court, parties have the right to seek the inhibition or the disqualification of judges who do not appear to be wholly free, disinterested, impartial or independent in handling a case. Whether judges should inhibit themselves therefrom rests on their own “sound discretion.”[24] That discretion is a matter of conscience and is addressed primarily to their sense of fairness and justice.[25]

However, judges are exhorted to exercise their discretion in a way that the people’s faith in the courts of justice would not be impaired. A salutary norm for them to observe is to reflect on the possibility that the losing parties might nurture at the back of their minds the thought that the former have unmeritoriously tilted the scales of justice against them.[26] Of course, the judges’ right must be weighed against their duty to decide cases without fear of repression.

Verily, the second paragraph of Section 1 of Rule 137 does not give judges the unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias or partiality is not enough ground for them to inhibit, especially when the charge is without basis.[27] This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality.[28]

In a string of cases, the Supreme 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.[29] Bare allegations of their partiality will not suffice. It cannot be presumed, especially if weighed against the sacred oaths of office of magistrates, requiring them to administer justice fairly and equitably -- both to the poor and the rich, the weak and the strong, the lonely and the well-connected.[30]

Equally important is the established doctrine that bias and prejudice must be shown to have resulted in an opinion on the merits on the basis of an extrajudicial source, not on what the judge learned from participating in the case.[31] As long as opinions formed in the course of judicial proceedings are based on the evidence presented and the conduct observed by the magistrate, such opinion -- even if later found to be erroneous -- will not prove personal bias or prejudice on the part of the judge.[32] While palpable error may be inferred from the decision or the order itself, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose. At bottom, to disqualify a judge, the movant must prove bias and prejudice by clear and convincing evidence. [33]

Prescinding from the foregoing standards, we do not agree with the Court of Appeals’ conclusion that Judge Dicdican has shown a glaring bias against respondents’ case. His actuations have not engendered reasonable suspicion as to his fairness and ability to decide the case with the cold neutrality of an impartial judge. Verily, respondents have not convinced us that Judge Dicdican should inhibit himself from hearing the case.

Let us now examine one by one the circumstances relied upon by the CA in ruling for the inhibition of Judge Dicdican.

Denial of Respondents’ Motion
to Hear Affirmative Defenses

The first circumstance which the appellate court relied upon to show the alleged bias and partiality of Judge Dicdican was his denial of the Motion to Hear Affirmative Defenses filed by respondents.[34] According to them, even if the judge had denied their Motion, he still ruled on the merits of their affirmative defenses and thus deprived them of an opportunity to be heard.

The fact that respondents' Motion for Hearing was denied does not by itself show bias and partiality. Clearly, Judge Dicdican based his denial on the Rules of Court, according to which a preliminary hearing on affirmative defenses is indeed discretionary on the part of a judge.[35] Thus, Judge Dicdican cannot be charged with bias and partiality, merely on the basis of his decision not to grant a motion for a preliminary hearing.

We are not unmindful of our ruling in the previous *Gochan v. Gochan* case.[36] This Court held therein that the trial court committed grave abuse of discretion when it denied the motion of respondents for a preliminary hearing on their affirmative defenses. But even in that case, two members of this Court[37] dissented and believed that respondent judge (herein Judge Dicdican) had not committed any grave abuse of discretion in disallowing the preliminary hearing on respondents' affirmative defenses.

In any event, this Court's ruling of grave abuse of discretion in a certiorari proceeding such as the one issued in the earlier *Gochan* case does not necessarily translate to bias and partiality that would ipso facto lead to the inhibition of the trial judge. In fact, in the previously cited case, this Court did not mention any badge of bias or partiality on the part of Judge Dicdican. He was simply directed to conduct forthwith the preliminary hearing on the affirmative defenses.

To repeat, as long as opinions formed in the course of judicial proceedings are based on the evidence presented and the conduct observed by the judge, such opinion -- even if later found to be erroneous on appeal or made with grave abuse of discretion on certiorari -- will not necessarily prove personal bias or prejudice on the part of the judge.[38]

Neither can respondents convince us that they were deprived of due process. The essence of due process is the reasonable opportunity to be heard and to submit any evidence available in support of one's defense.[39] Where one is accorded an opportunity to be heard, either through oral arguments or pleadings, there is no denial of procedural due process.[40] Due process was designed to afford an opportunity to be heard; an oral hearing need not always be held. Moreover, this constitutional mandate is deemed satisfied if the pleader is granted an opportunity to seek reconsideration of the action or ruling complained of.[41]

Judge Dicdican's Order[42] denying respondents' Motion for Hearing was based on the pleadings filed by both parties. Respondents filed their Motion to Hear Affirmative Defenses, while petitioners filed their Comment to the Motion.[43] Thus, it cannot be said that respondent judge arbitrarily ruled thereon. He thereafter allowed the respondents and petitioners to file their Motion for Reconsideration[44] and Opposition,[45] respectively, before deciding on the matter again.

Character of the Order

Denying Respondents' Motion

Respondents further argue that before hearing their Motion to Hear Affirmative Defenses, Judge Dicdican had already prepared an Order denying their plea. This is an allegation that they have not been able to prove. We cannot rely merely on their submissions that he was in fact bent on ruling against them. Petitioners correctly argued as follows:

"The fact is that Judge Dicdican really dictated his Order in open court with legal citations and authorities but did not prepare it beforehand. We respectfully submit that said act cannot be considered as a manifestation of

bias and partiality and deprived respondents of due process because the motion filed by respondents, copy of which was attached as Annex 'A' to the reply of petitioners was complete with the evidence already attached as annexes thereto and contained citation of authorities and the opposition of petitioners, copy of which was attached to the reply as Annex 'B,' contained citations of authorities as well.”[46]

The argument that the Order of Judge Dicdican was too scholarly to be extemporaneous is merely the conjecture of respondents. This characterization does not show in any way that he was biased or partial. Besides, as earlier adverted to, both the Motion and the Comment thereto had been filed days before the hearing thereon. It is not unusual -- in fact, it is expected -- that the judge would study the Motion and the Comment filed before him. If he prepared well for the arguments, he should be commended, not faulted.

Besides, Judge Dicdican ruled that the issues raised in the Motion could be determined on the basis of preponderance of evidence presented by both parties.[47] This means that he did not foreclose the possibility that the parties would ventilate these defenses during the trial.

To show his fairness, he even allowed the postponement of the pretrial set for that hearing upon the request of respondents' counsel. This act showed that he was in no hurry to decide the case in favor of petitioners.

As to respondents' doubts arising from the alleged “suspicious” appearance of the TSN of the August 11, 2003 hearing, this Court cannot take it as an indication of partiality on the part of the judge. Clearly, it was Atty. Jonathan G. Talabo, the branch clerk of court of Branch 11 of the RTC of Cebu, who had issued the Certification[48] dated November 11, 1999. Respondents failed to prove that Judge Dicdican had a hand in its issuance. What is clear is that the TSN of August 11, 1998 was prepared and signed by Emelyn V. Fuentes, stenographic reporter of Branch 11 of the RTC of Cebu. Connecting this “suddenly found” TSN to Judge Dicdican is not only speculative, but also baseless and unfair and will not suffice to bar respondent judge from performing his lawfully mandated duty.

Admission of Petitioners' Exhibits Without indicating Respondents' Objections

In his Order[49] dated June 2, 1999, Judge Dicdican admitted the documentary evidence of plaintiffs. He did so after petitioners had filed their Formal Offer of Exhibits[50] and respondents their Comments (on Plaintiff's Exhibits).[51] The former was filed on May 5, 1999 and the latter on May 12, 1999. He issued his Order admitting the evidence of petitioners only on June 2, 1999 or a good 21 days after respondents had submitted their objections to the former's exhibits.

We cannot see how such an Order would translate to bias and partiality. Respondents argue the judge should have indicated their objections for the record. But it is clear that he indeed allowed them to file their Comment/Objections to petitioners' Formal Offer. It is enough that he allowed both parties to be heard, and that he decided based on their submissions.

We do not agree, either, with the appellate court's findings that petitioners' witnesses were allowed to answer all questions asked of them, even if respondent judge had not yet ruled on the applicability of the Statute of Frauds.

Aside from the fact that these objections are sweeping and unsubstantiated, they should have been raised before the trial judge himself. Respondents had every opportunity to object to the questions the witnesses were asked and the answers the latter gave during the trial, based on the following provision of the Rules of Court:

“Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.”[52]

As to the striking out of answers, the rule on evidence (Rule 132) provide:

“SEC. 39. Striking out answer. - Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be meritorious, the court shall sustain the objection and order the answer given to be stricken off the record.

“On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper.”[53]

Respondents have not shown that they were in any way denied their right to object to questions propounded in the course of the hearing.

Denial of Requests for Postponement and the Forced Cross-Examination of Witnesses

The CA also ruled that the denial by Judge Dicdican of the postponements requested by respondents' counsels also showed his bias and partiality.

We disagree. A motion for continuance or postponement is not a matter of right, but a request addressed to the sound discretion of the court.[54] Parties asking for postponement have absolutely no right to assume that their motions would be granted. Thus, they must be prepared on the day of the hearing.[55]

Given this rule, the question of the correctness of the denial of respondents' requests for postponements was addressed to the sound discretion of Judge Dicdican. His action thereon cannot be disturbed by appellate courts in the absence of any clear and manifest abuse of discretion resulting in a denial of substantial justice.[56] Since there was no such finding with regard to the disallowance of the requests for postponement, the CA cannot overturn the decision of the judge. Much less can it assume his bias and partiality based merely on the denial of the requests for postponement.

Moreover, respondents cannot claim that all their requests were turned down by Judge Dicdican. This Court takes notice of the fact that respondents asked for an extension of time to file their answer and later asked for two postponements of the pretrial. In fact, when the pretrial was finally set for August 11, 1998, they then filed their Motion to Hear Affirmative Defenses. And when the judge denied it, they again asked for a postponement of the pretrial, a request that was readily granted by the trial court.

Respondents fault Judge Dicdican for not postponing the pretrial on November 9, 1998, when their counsel had to represent the Cebu Lions Club in an international conference in Japan. But they should be aware that the court had already given them one whole month to procure from the Court of Appeals a temporary restraining order (TRO) to cause the suspension of the proceedings in the lower court. So, on November 9, 1998, they were given sufficient time to prepare for the pretrial. If their counsel learned of the date of the conference only recently, he could have easily assigned the case to Atty. Vicente A. Espina Jr., his co-counsel. In fact, Atty. Espina, armed with a special power of attorney to represent respondents, was present in court on the hearing date. He even admitted that he was able to read the records of the case. Also, as correctly argued by petitioners' counsel, respondents had with them their pretrial briefs which could have guided them.

As can be seen from the Pretrial Order, respondents were ably represented by Atty. Espina. Hence, they suffered no prejudice even if the pretrial was not postponed. The trial court observed during the hearing:

“The Court actually does not consider that as the reason to postpone the pre-trial in this case because it seemed that there is a pattern to delay. And the Court can not countenance that there would be no movement of this case. There seemed to be a pattern as observed by the Court. So we will go on with the pre-trial if there is no possibility of an amicable settlement.”[57]

It seems that respondents have no one else to blame but themselves for the trial court's denial of their requests for postponement.

As to the other time when the request of respondents for postponement was denied by Judge Dicdican, this Court notes that both their counsels -- Attys. Lim and Espina -- were present during the preceding hearing when the dates of the succeeding hearings were agreed upon. As stated in the TSN,[58] the parties agreed that the next setting would be on April 28, 1999 at 9:00 a.m. and on April 30, 1999 at 10:00 a.m. But on April 23, 1999 -- more than two months after the trial date had been set and only five days before the scheduled hearing -- respondents' counsel filed an urgent Motion to Reset the hearing to April 28, 1999, because both lawyers allegedly had other commitments. Petitioners filed an Opposition to the Motion to Reset; thus, respondent judge's denial of the Motion was not at all arbitrary or whimsical.

The appellate court also faults Judge Dicdican for allowing petitioners to present their witnesses even in the absence of respondents' counsel and, on the succeeding hearing, for forcing the counsel to cross-examine the witness presented previously.

As we have ruled above, parties asking for postponement have absolutely no right to assume that their motion would be granted and must thus be prepared on the day of the hearing.[59] What further militates against respondents' counsel is his excuse that he was informed by a court personnel that his Motion to Reset had been granted.[60] Supposedly because of this information, the counsel was under the impression that there would be no hearing on the last scheduled date. His assumption that his motion to reset would be granted was bad enough. What was worse was that, in following up the proceedings of the case, he relied on the unauthorized communication of an unidentified court personnel. He could have easily verified if there was a hearing, and what transpired if it indeed there was one. This is the duty imposed upon lawyers.

Due diligence requires that lawyers should obtain timely information from the concerned clerks of court regarding action on their motions; lack of notice thereof will not necessarily make them any less accountable for their omission.[61]

Petitioners correctly argue thus:

“x x x. Judge Dicdican then allowed the counsel for petitioners to conduct the redirect examination of his first witness, and to conduct the direct examination of his second witness, giving the petitioners the opportunity to conduct the re-cross examination of said witness and cross-examination of the second witness on April 30, 1999. Judge Dicdican therefore was very fair and considerate to respondents in giving them the opportunity to re-cross examine and cross-examine petitioners' witnesses instead of considering the respondents to have waived said right which was within his prerogative.”[62]

Indeed, the right to cross-examine may be waived.[63] The repeated failure of a party to cross-examine a witness is an implied waiver of that right.[64] Respondents in this case were afforded the opportunity to cross and re-cross examine the other parties' witnesses. It was respondents' counsel who failed to take advantage of these opportunities.

Denial of the Motion for Inhibition

The appellate court maintains that during the hearing for respondents' Motion for Inhibition, the judge called the case before the scheduled time.

Again, this is a claim that remains unproven and unsubstantiated. Hence, it cannot be the extrajudicial source from which can be inferred bias and partiality. Both parties uniformly quote the proceedings on the hearing date for the case succeeding that on which the Motion to Inhibit was to be heard:

“COURT:

Were you here last Monday? I did not see you?

ATTY. LIM:

I was here, your Honor.

COURT:

When this case was called, there was no appearance.

COURT INTERPRETER:

He came late, Your Honor.

ATTY. LIM:

I was here, your Honor, at 10:00 o'clock, your Honor, in fact, there were still many parties around, your Honor.

COURT:

As far as the minute is concerned, it is not reflected that you were here. When the case was called you were not here. The court could not be at the mercy of the parties, so, the court has to act. So, the court stand by that order. So you are not ready.”[65]

Respondents maintain that “[o]n the date of said hearing, counsel for respondents was present at 10:00 a.m. However, he learned that the hearing of the case was called earlier upon order of Judge Dicdican. Counsel for respondents then decided to leave the courtroom, to inquire later, albeit unsurprised.”[66]

Without presenting any proof of their presence on the hearing date at the designated time, the arguments of respondents’ counsel lose force and credence. Such arguments become even less convincing when validated against the records of this case. As shown by the Minutes of the Session[67] held on August 9, 1999 at 10:00 a.m., only the counsels for plaintiffs [herein petitioners] were present.

It should be observed that the entries in official records made in the performance of duty by a public officer of the

Philippines or by some other person especially enjoined by law are prima facie evidence of the facts therein stated.[68] This means that, in the present case, such evidence is satisfactory, more so because it has been uncontradicted by opposing evidence. Also, when the court interpreter[69] signed the Minutes of the Session, it is presumed that official duty was regularly performed.[70]

In any event, Judge Dicdican cannot be accused of evading the Motion filed for his inhibition. He allowed it to be filed and even cancelled one hearing until the resolution of that Motion. He also allowed petitioners to file their Opposition thereto[71] and thus showed that he wanted to hear both sides of the issue.

We do not find the Order[72] denying the Motion for Inhibition arbitrary or whimsical. Respondent judge clearly explained why the grounds for it were unjust and invalid. On the basis of his circumspect and judicious ruling, we do not see how bias and partiality on his part can be inferred.

Thereafter, he allowed a Motion for Reconsideration[73] to be filed with the corresponding Opposition[74] thereto.

We again emphasize that personal bias or prejudice is not proved by the opinions the judge forms in the course of judicial proceedings, so long as these have been based on the evidence presented and the conduct observed by the judge, even if such opinions are later found to be erroneous.[75]

Declaration of the Absence of the Possibility of a Compromise

Finally, Judge Dicdican was charged with bias, based on his pretrial Order stating that there was no more possibility of a compromise among the parties.

From the time the original Complaint was filed up to the date of the pretrial, the parties had more than seven months to enter into a compromise agreement. This was more than sufficient time. It escapes this Court why, exactly on the day of the pretrial, respondents suddenly informed the court that it was exploring the possibility of a settlement. Besides, their absence during the pretrial negated the sincerity of their desire to enter into a settlement. We take note of the following argument of petitioners:

“But Judge Dicdican did not believe in their sincerity to pursue an amicable settlement of the case since they had already filed their first petition for certiorari seeking the issuance of a TRO/Writ of Preliminary [Injunction] enjoining him from taking further proceedings in the case below. Furthermore, they were never present at the scheduled pre-trials and hearings of the case.” [76]

ALL TOLD, a perusal of the records of this case will reveal that respondents failed to adduce any extrinsic evidence to prove that Judge Dicdican had been motivated by malice or prejudice in issuing the assailed rulings. They simply lean on his series of allegedly adverse rulings, which they characterize as tainted with bias and partiality. We note that his rulings resolving the various motions or requests they had filed were all made only after considering the arguments raised by all the parties. It is true that he erred in some of his rulings, but such errors do not necessarily translate to prejudice. The instances when he allegedly exhibited antagonism and partiality against respondents and/or their counsels did not deprive them of a fair and impartial trial.

The parties should be guided by the words of this Court in *Pimentel v. Salanga*: [77]

“Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show

arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. x x x Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice 'without respect to person and do equal right to the poor and the rich.' To disqualify or not to disqualify himself then, as far as respondent judge is concerned, is a matter of conscience." [78]

WHEREFORE, the Petition is hereby GRANTED and the assailed CA Decision and Resolution REVERSED and SET ASIDE. The prayer for the inhibition of Judge Isaias Dicdican is hereby DENIED. He is DIRECTED to proceed with the hearing of CEB-21854 with all reasonably speed. No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez, and Carpio Morales, JJ., concur.
Corona, J., on leave.

[1] People v. CA, 309 SCRA 705, July 2, 1999.

[2] Annex "F" of the Petition; rollo, pp. 266-277; penned by Justice Wenceslao I. Agnir Jr. and concurred in by Justices Corona Ibay Somera (Division chairman) and Portia Aliño Hormachuelos (member).

[3] Annex "H" of the Petition; rollo, pp. 306-309.

[4] CA Decision, p. 11; rollo, p. 276.

[5] Annex "G" of the Petition; rollo, pp. 278-305.

[6] CA Decision, pp. 2-5; rollo, pp. 267-270.

[7] Id., pp. 8 & 273.

[8] Id., pp. 10 & 275.

[9] Ibid.

[10] Id., pp. 8-10 & 273-275.

[11] The Court received the Memorandum for respondents filed by Soo Gutierrez Leogardo & Lee on March 8, 2001. Petitioners' Memorandum, on the other hand, was received on March 7, 2001 from Zosa & Quijano Law Offices. However, the case was deemed submitted for resolution only on January 24, 2003 upon receipt by the Court of the complete case records, which had been transmitted by the branch clerk of court of the Regional Trial Court, Branch 11, of Cebu City.

[12] Rollo, pp. 439-478.

[13] Petitioners' Memorandum, p. 13; rollo, p. 451.

[14] Gochan et al. v. Gochan et al., GR No. 146089, December 13, 2001.

[15] Id., p. 9.

[16] Ibid.

[17] Id., pp. 9-10.

[18] G.R. No. 146089, Resolution dated August 14, 2002.

- [19] *Webb v. People*, 276 SCRA 243, July 24, 1997.
- [20] *Webb v. People*, supra; *Tan Jr. v. Gallardo*, 73 SCRA 306, October 5, 1976.
- [21] R137, §1, Revised Rules of Court.
- [22] *Gutang v. CA*, July 8, 1998, 292 SCRA 76; *Pimentel v. Salanga*, 21 SCRA 160, September 18, 1967.
- [23] *People v. Kho*, 357 SCRA 290, April 20, 2001 citing *Pimentel v. Salanga*, supra.
- [24] Extended Explanation of Inhibition of J. Panganiban, *Estrada v. Macapagal-Arroyo*, 353 SCRA 452, March 2, 2001.
- [25] *Flores v. CA*, 259 SCRA 618, July 29, 1996.
- [26] *People v. Kho*, supra; *Gutang v. CA*, supra.
- [27] *People v. Kho*, supra.
- [28] *Gohu v. Spouses Gohu*, 343 SCRA 114, October 13, 2000; *Abdula v. Guiani*, 326 SCRA 1, February 18, 2000.
- [29] *Reyes v. CA*, 363 SCRA 725, August 28, 2001; Extended Explanation of Inhibition of J. Panganiban, *Estrada v. Macapagal-Arroyo*, supra.
- [30] Cf. *Soriano v. Angeles*, 339 SCRA 366, August 31, 2000; *People v. CA*, 309 SCRA 705, July 2, 1999; *Go v. CA*, 221 SCRA 397, April 7, 1993.
- [31] *Viewmaster Construction Corp. v. Roxas*, 335 SCRA 540, July 13, 2000; *Seveses v. CA*, 316 SCRA 605, October 13, 1999; *Aleria Jr. v. Velez*, 298 SCRA 611, November 16, 1998.
- [32] *Viewmaster Construction Corp. v. Roxas*, supra; *Seveses v. CA*, supra; *Aleria Jr. v. Velez*, supra.
- [33] *Fr. Sinnott v. Judge Barte*, AM No. RTJ-99-1453, December 14, 2001; *Webb v. People*, supra.
- [34] Records, pp. 78-88.
- [35] R16, §6, Revised Rules of Court, provides: "SEC. 6. Pleading grounds as affirmative defenses. - If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed."
- [36] Supra.
- [37] Chief Justice Hilario G. Davide Jr. and Associate Justice Reynato S. Puno.
- [38] *Viewmaster Construction Corp. v. Roxas*, supra; *Seveses v. CA*, supra; *Aleria Jr. v. Velez*, supra.
- [39] *Gacutana-Fraile v. Domingo*, 348 SCRA 414, December 15, 2000; *Salonga v. CA*, 269 SCRA 534, March 13, 1997.
- [40] *Bayan Telecommunications, Inc. v. Express Telecommunication Co., Inc.*, G.R. No. 147210, January 15, 2002; *Zaldivar v. Sandiganbayan*, 166 SCRA 316, October 7, 1988.
- [41] *Corona v. United Harbor Pilots Association of the Philippines*, 283 SCRA 31, December 12, 1997.
- [42] Records, pp. 117-118.

- [43] Id., pp. 112-115.
- [44] Id., pp. 120-130.
- [45] Id., pp. 131-135.
- [46] Petitioners' Memorandum, p. 32; rollo, p. 470.
- [47] Order dated August 11, 1998, p. 1; rollo, p. 117.
- [48] Records, p. 304.
- [49] Id., p. 236.
- [50] Id., pp. 197-228.
- [51] Id., pp. 229A-235A.
- [52] §36, R132, Rules of Court.
- [53] §39, R132, Rules of Evidence.
- [54] *Tiomico v. CA*, 304 SCRA 216, March 4, 1999; *Pepsi Cola Products Phils, Inc. v. CA*, 299 SCRA 518, December 2, 1998.
- [55] *Republic v. Sandiganbayan*, 301 SCRA 237, January 20, 1999; *Iriga Telephone Co., Inc. v. NLRC*, 286 SCRA 600, February 27, 1998.
- [56] *Pepsi Cola Products Phils, Inc. v. CA*, *supra*.
- [57] TSN, November 9, 1998, p. 4.
- [58] Id., February 5, 1999, p. 63.
- [59] *Republic v. Sandiganbayan*, *supra*; *Iriga Telephone Co., Inc. v. NLRC*, *supra*.
- [60] TSN, April 30, 1999, p. 2.
- [61] *Ramos v. Dojoyag Jr.*, AC No. 5174, February 28, 2002.
- [62] Petitioners' Memorandum, pp. 37-38; rollo, pp. 475-476.
- [63] *SCC Chemicals Corp. v. CA*, 353 SCRA 70, February 28, 2001.
- [64] *SCC Chemicals Corp. v. CA*, *supra*.
- [65] Petitioners' Memorandum on p. 39 and rollo on p. 477; Respondents' Memorandum on pp. 10-11 and rollo on pp. 488-489.
- [66] Respondents' Memorandum, p. 10; rollo, p. 488.
- [67] Records, p. 254.
- [68] §23, R132, Rules of Evidence.
- [69] Nena R. Buenconsejo.
- [70] §3(m), R131, Rules of Evidence.
- [71] Records, pp. 249-253.

[72] Id., pp. 256-257.

[73] Id., pp. 259-263.

[74] Id., pp. 264-265.

[75] Viewmaster Construction Corp. v. Roxas, supra; Seveses v. CA, supra; Aleria Jr. v. Velez, supra.

[76] Petitioners' Memorandum, p. 37; rollo, p. 475.

[77] 21 SCRA 160, September 18, 1967.

[78] Id., pp. 166-167, per Sanchez, J.

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