

**CITY GOVERNMENT OF BUTUAN AND CITY MAYOR LEONIDES
THERESA B. PLAZA, THE LATTER IN HER PERSONAL CAPACITY AND
AS REPRESENTATIVE OF HER CO-DEFENDANT, PETITIONERS, VS.
CONSOLIDATED ...**

G.R. No. 157315. December 01, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Petitioners City Government of Butuan and City Mayor Leonides Theresa B. Plaza (petitioners) appeal the adverse decision dated October 28, 2002 (dismissing their petition for certiorari and prohibition to challenge the grant by the trial judge of the application for a writ of preliminary injunction after reconsidering his earlier self-inhibition),^[1] and the resolution dated January 29, 2003 (denying their motion for reconsideration), both promulgated by the Court of Appeals (CA) in C.A.-G.R. SP No. 69729 entitled City Government of Butuan and City Mayor Leonides Theresa B. Plaza, the latter in her personal capacity and as representative of her co-defendant v. Consolidated Broadcasting System (CBS), Inc., doing business under the name and style "DXBR" Bombo Radyo Butuan, represented by its Manager, Norberto P. Pagaspas, and the Hon. Rosarito F. Dabalos, Presiding Judge, RTC, Branch 2, of Agusan del Norte and Butuan City.

Antecedents^[2]

In February, 2002, City Mayor Plaza (Mayor Plaza) wrote to the Sangguniang Panlungsod of Butuan City to solicit its support for her decision to deny the application for mayor's permit of respondent Bombo Radyo/Consolidated Broadcasting System (CBS), and to eventually close down CBS's radio station. She justified her decision by claiming that CBS's operating its broadcasting business within the Arujiville Subdivision, a residential area, had violated the City's zoning ordinance. Her letter pertinently reads:

In 1994, Bombo Radyo/Consolidated Broadcasting System manifested their intention to operate on their current site at Arujiville Subdivision which is a residential area. They were informed that they cannot situate their business in the area as it violates our zoning ordinance. However, they have pleaded and was agreeable to operate in the area by virtue of a Temporary Use Permit (TUP) xxx.

The TUP allowed them to operate in the area but only for a very limited period. As a matter of fact, the TUP was good only for one year, which can be renewed every year for a maximum of five (5) years or until 1999. Thus, right from the beginning they have been informed and forewarned that they cannot operate in the area forever and that they have to relocate to a proper area.

Bombo Radyo renewed its TUP only in 1995 and 1996. They have failed to renew their TUP up to today.

This office has received numerous complaints against Bombo Radyo for violation of private rights, inciting people to go rise against the government, malicious imputations, insinuations against people not of their liking, false or fabricated news, etc. The list is so long to enumerate. Copies of the petitions, manifestos from various groups is hereto attached for your perusal.

Thus, for violation of the city zoning ordinance, the expiration of their TUP, which was never renewed since 1997, failure to secure ECC and the numerous complaints against the station of the residents within the immediate vicinity of their premises and the threat they are causing to the peace and order of the City, I have decided to deny their application for a mayor's permit and thereafter to close the radio station.

In view of the foregoing premises, I am forwarding this matter to the Sangguniang Panlungsod to solicit your resolution of support on the matter.

This is not a decision calculated to deprive (sic) Radio Bombo of its freedom of speech or expression. This is just a simply matter of whether or not Radyo Bombo has complied with existing laws and ordinances.

Thereupon, the Sangguninang Panlungsod adopted Resolution-057-2002 "to strongly support the decision of the City Mayor to deny the application of Consolidated Broadcasting System Development Corporation (Bombo Radyo-Butuan) for a Mayor's Permit and thereafter close the radio station." [3]

On February 18, 2002, the City's licensing officer served on CBS's station manager a final/last notice of violation and demand to cease and desist illegal operation, with a warning that he would recommend the closure of its business in case of non-compliance.

On February 19, 2002, CBS and its manager, Norberto Pagaspas, filed a complaint for prohibition, mandamus, and damages against the petitioners in the Regional Trial Court in Butuan City (RTC),[4] with prayer for a temporary restraining order (TRO) and writ of preliminary injunction to restrain the petitioners from closing its station, or from disturbing and preventing its business operations. The case, docketed as Civil Case No. 5193, was raffled to Branch 2, presided by Judge Rosarito P. Dabalos.

On February 20, 2002, Judge Dabalos voluntarily inhibited and directed the return of Civil Case No. 5193 to the Office of the Clerk of Court for re-affle.[5] He cited the circumstances that might affect his objectivity and impartiality in resolving the controversy as his justification, to wit:

xxx

- a) That the undersigned was the object of its (plaintiff's) attacks and criticism which are judgmental and not inquisitorial in the comments over the air;
- b) That the undersigned was shouted at disrespectfully by one of plaintiff's reporters/news gatherers in the vicinity of the Hall of Justice;
- c) That plaintiff's commentaries are making pronouncements on legal matters, substantive and procedural, based on its perception and not on laws;
- d) That in its commentaries in attacking public officials as well as private individuals, words which are disrespectful and indecent are used.

and the net effect and result of its commentaries over the air causes confusion on the minds of the public, including the young that the court and government offices and public officials will lose their credibility and respect which are due them.

The court is aware of press freedom is enshrined in our constitution but such freedom should not be abused because in every right there is a concomitant obligation.

Let therefore this case be returned immediately to the office [of the] Clerk of Court VI for re-raffling.

SO ORDERED.

On the same day, Judge Victor Tomaneng, Presiding Judge of Branch 33, issued an order also inhibiting himself from handling Civil Case No. 5193, and in his capacity as Vice Executive Judge (in lieu of Executive Judge Cipriano B. Alvizo, Jr., then on sick leave) directed the assignment of Civil Case No. 5193 to Branch 5 without raffle,[6]viz:

xxx Considering that the Executive Judge Hon. Cipriano B. Alvizo, the Presiding Judge of RTC-Branch 4 and Acting-Designate Presiding Judge of RTC-Branch 3, but who is now in Cebu City for medical treatment, it would be impractical to include his courts in the re-raffling of cases for the reason that the case is for prohibition, mandamus, injunction, etc., that needs immediate action. The herein Vice-Executive Judge who is the Presiding Judge of RTC-Branch 33, could not also act on this case on the ground of 'delicadeza' considering that defendant Hon. Mayor Leonides Theresa B. Plaza is his 'kumadre' plus the fact that before becoming judge he was the legal counsel of the LDP party here in Butuan City, in the election of 1992 and 1995, which is the political party of the Plasas. RTC-Branch 1, being the exclusive Family Court cannot also be included in any raffle.

In view of the foregoing, and on the ground of expediency, the Clerk of Court is ordered to send this case to RTC-Branch 5, without raffle anymore, it being the only practical available court in this jurisdiction as of this moment.

Civil Case No. 5193 was forwarded to Branch 5, presided by Judge Augustus L. Calo, who recused because his wife had been recently appointed by Mayor Plaza to the City's Legal Office. Judge Calo ordered the immediate return of the case to the Clerk of Court for forwarding to Vice Executive Judge Tomaneng.

Without any other judge to handle the case, Judge Tomaneng formally returned Civil Case No. 5193 to Judge Dabalos, stating in his letter that Judge Dabalos' reason for inhibition did not amount to a plausible ground to inhibit. Judge Tomaneng instructed Judge Dabalos to hear the case unless the Supreme Court approved the inhibition.[7]

On February 21, 2002, Judge Tomaneng issued a TRO,[8] to wit:

The Court believes that there is a need to maintain the status quo until all the other issues in the complaint shall have been duly heard and determined without necessarily implying that plaintiff is entitled to the prayers for injunction. The Court hereby resolves in the meantime to grant a temporary restraining order.

WHEREFORE, defendants City Gov't of Butuan and City Mayor Leonides Theresa B. Plaza, their attorneys, agents, employees, police authorities and/or any person acting upon the Mayor's order and instruction under her authority are hereby enjoined to cease, desist and to refrain from closing or padlocking RADYO BOMBO or from preventing, disturbing, or molesting its business operations, including but not limited to the use and operation of its building, structures and broadcasting facilities, and the ingress or egress of its employees therein.

As this Court cannot issue a seventy-two (72) hour Temporary Restraining Order because of the incoming delay on Monday, February 25, 2002, a temporary restraining order is hereby issued effective for twenty (20) days from issuance (Sec. 5, Rule 58, 1997 Revised Rules on Civil Procedure).

Meanwhile, let this case be set for summary hearing on March 11, 2002 at 8:30 in the morning to resolve the pending application for injunction and for the defendants to show cause why the same shall not be granted.

IT IS SO ORDERED.

On February 25, 2002, the petitioners filed an urgent motion to lift or dissolve temporary restraining order in

Branch 2 (sala of Judge Dabalos).

On February 26, 2002, Judge Dabalos referred his order of inhibition in Civil Case No. 5193 to the Court Administrator for consideration, with a request for the designation of another Judge not stationed in Butuan City and Agusan del Norte to handle the case.[9]

Consequently, CBS requested the Court to designate another judge to hear its application for the issuance of a writ of preliminary injunction, the hearing of which Judge Tomaneng had set on March 11, 2002.[10]

In the meanwhile, or on March 8, 2002, the petitioners filed their answer to the complaint, alleging affirmative and special defenses and praying for the dismissal of the complaint, the lifting of the TRO, the denial of the prayer for preliminary injunction, and the granting of their counterclaims for moral and exemplary damages, attorney's fees, and litigation expenses.

During the hearing on March 11, 2002 of CBS's application for the issuance of a writ of preliminary injunction, at which the petitioners and their counsel did not appear, CBS's counsel manifested that he was desisting from his earlier request with the Court for the designation of another judge to hear Civil Case No. 5193. Judge Dabalos noted the manifestation but reset the hearing of the application for preliminary injunction on March 12, 2002, to give the petitioners an opportunity to show cause why the writ prayed for should not issue. For the purpose of the resetting, Judge Dabalos caused a notice of hearing to be served on the petitioners.[11]

Upon receipt of the notice of hearing, the petitioners moved to quash the notice and prayed that the TRO be lifted, insisting that Judge Dabalos had already lost his authority to act on Civil Case No. 5193 by virtue of his inhibition.[12]

Nonetheless, Civil Case No. 5193 was called on March 12, 2002. The parties and their respective counsel appeared. At the close of the proceedings on that date, Judge Dabalos granted CBS's prayer for a writ of preliminary injunction,[13] to wit:

WHEREFORE, in view of the foregoing as the defendants did not introduce any evidence in spite of the order of the Court to show cause why no writ of preliminary injunction be issued and the repeated directive of the court in open court for the defendants to present evidence which the defendants firmly refused to do so on flimsy grounds, the Court resolves to issue a writ of preliminary injunction as the complaint under oath alleges that plaintiff is a grantee of a franchise from the Congress of the Philippines and the act threatened to be committed by the defendants curtail the constitutional right of freedom of speech of the plaintiff which the Court finds that it should be looked into, the defendants' refusal to controvert such allegations by evidence deprived the Court [of] the chance to be guided by such evidence to act accordingly that it left the court no alternative but to grant the writ prayed for, the City Government of Butuan and City Mayor Leonides Theresa B. Plaza, their attorneys, agents, employees, police authorities and/or any person acting upon the Mayor's order or instructions or under her authority are hereby enjoined to cease and desist and to refrain from closing or padlocking RADYO BOMBO or from preventing, disturbing or molesting its business operations, including but not limited to the use and operation of its building, structures, broadcasting facilities and the ingress or egress of its employees therein upon plaintiff's putting up a bond in the amount of P200,000.00 duly approved by this court which injunction bond shall be executed in favor of the defendants to answer for whatever damages which the defendants may sustain in connection with or arising from the issuance of this writ if, after all the court will finally adjudge that plaintiff is not entitled thereto.

This order is without prejudice to the findings of the court after a formal hearing or a full blown trial.

Furnish copies of this order to the Hon. Supreme Court and the Hon. Court Administrator.

SO ORDERED.[14]

Following CBS's posting of P200,000.00 as the required injunction bond, Branch 2 issued the writ of preliminary injunction on March 15, 2002,[15] commanding and directing the provincial sheriff to:

xxx forthwith enjoin the City Government of Butuan and the Hon. City Mayor Leonides Theresa B. Plaza, their attorneys, agents, employees, police authorities and/or any person acting upon the mayor's order or instruction or under her authority to cease and desist and to refrain from closing or padlocking RADIO BOMBO or from preventing disturbing or molesting its business operations, including the use and operation of its building, structures, broadcasting facilities and the ingress and egress of its employees therein. Copies of the writ of preliminary injunction, bond and other pertinent documents thereto be served on the defendants and thereafter make a return of your service of this writ within the period required by law and the Rules of Court.

Thus, the petitioners commenced in the CA a special civil action for certiorari and prohibition (with prayer for TRO or writ of preliminary injunction).

The CA dismissed the petition for certiorari and prohibition upon a finding that Judge Dabalos had committed no grave abuse of discretion in acting upon CBS's application for preliminary injunction, given the peculiar circumstances surrounding the raffling and assignment of Civil Case No. 5193, and the urgent need to resolve the application for preliminary injunction due to the expiration of Judge Tomaneng's TRO by March 13, 2002. The CA held that the writ of preliminary injunction had properly issued, because the petitioners had threatened to defeat CBS's existing franchise to operate its radio station in Butuan City by not issuing the permit for its broadcast business.

Issues

Hence, this appeal via petition for review on certiorari, with the petitioners contending that:[16]

- THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT JUDGE ROSARITO F. DABALOS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN, ON MARCH 12, 2002, WITHOUT SUFFICIENT NOTICE TO PETITIONERS, HE AGAIN TOOK COGNIZANCE OF AND RE-ASSUMED JURISDICTION OVER CIVIL CASE NO. 5193 AFTER HE HAD ALREADY EFFECTIVELY INHIBITED HIMSELF FROM HEARING THE SAME IN TWO EARLIER ORDERS HE HAD ISSUED DATED FEBRUARY 20 AND FEBRUARY 26, 2002 RESPECTIVELY.

- ASSUMING THAT RESPONDENT JUDGE ROSARITO DABALOS COULD VALIDLY RE-ASSUME JURISDICTION OVER CIVIL CASE NO. 5193 AFTER HE HAD EARLIER ISSUED TWO ORDERS VOLUNTARILY INHIBITING HIMSELF FROM HEARING SAID CASE, THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING A WRIT OF PRELIMINARY INJUNCTION WITHOUT REQUIRING PRIVATE RESPONDENT TO PRESENT EVIDENCE TO SHOW WHETHER SAID PRIVATE RESPONDENT HAS A CLEAR RIGHT THERETO.

Ruling

The appeal lacks merit. We find that the CA did not commit any error in upholding the questioned orders of the RTC.

I

Judge Dabalos lawfully re-assumed
jurisdiction over Civil Case No. 5193

In its decision, the CA ruled that Judge Dabalos did not gravely abuse his discretion in re-assuming jurisdiction over Civil Case No. 5193 in the light of the obtaining circumstances cogently set forth in its assailed decision, to

wit:[17]

Seemingly, petitioners lost sight of the reality that after the respondent judge issued his order of inhibition and directed the return of the case to the Office of the Clerk of Court for re-raffle to another judge, Vice-Executive Judge Victor A. Tomaneng, noting that there is no other judge to handle the case, directed the return thereof to the public respondent in view of the extreme urgency of the preliminary relief therein prayed for. Under the circumstances then obtaining, the respondent judge could do no less but to act thereon. So it is that he proceeded with the scheduled hearing on the application for preliminary injunction on March 11, 2002 and thereafter reset it for continuation the following day to afford the petitioners an opportunity to oppose the application and show cause why the writ prayed for should not issue. The urgency of the action demanded of the respondent judge is further accentuated by the fact that the TRO issued by Judge Tomaneng was then about to expire on March 13, 2002, not to mention the circumstance that Executive Judge Cipriano B. Alvizo, Jr., who happened to be around, advised the respondent judge to resolve the issues to the best of his discretion. xxx

The petitioners disagree, and insist that Judge Dabalos lost the authority to act upon CBS's application for preliminary injunction by virtue of his prior self-inhibition from hearing Civil Case No. 5193.

We cannot sustain the petitioners' insistence.

Section 1, Rule 137 of the Rules of Court, which contains the rule on inhibition and disqualification of judges, states:

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 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 and valid reasons other than those mentioned above.

The self-inhibition of Judge Dabalos was one taken in accordance with the second paragraph of Section 1. Our resolution herein turns, therefore, on the proper interpretation and application of the second paragraph.

The second paragraph of Section 1 (unlike the first paragraph) does not expressly enumerate the specific grounds for inhibition. This means that the determination of the grounds is left to the sound discretion of the judge, who must discern with only his or her conscience as guide on what may be just and valid reasons for self-inhibition. The vesting of discretion necessarily proceeds from the reality that there may be many and different grounds for a judge to recuse from a case, and such grounds cannot all be catalogued in the Rules of Court. Thus did the Court cogently point out in *Gutang v. Court of Appeals*:^[18]

xxx The import of the rule on the voluntary inhibition of judges is that the decision on whether or not to inhibit is left to the sound discretion and conscience of the trial judge based on his rational and logical assessment of the circumstances prevailing in the case brought before him. It makes clear to the occupants of the Bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there might be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preference or predilections are many and varied.

In his case, Judge Dabalos clearly discerned after the return of Civil Case No. 5193 to him by the Vice Executive Judge that his self-doubt about his ability to dispense justice in Civil Case No. 5193 generated by the airing of criticisms against him and other public officials by CBS's commentators and reporters would not ultimately affect

his objectivity and judgment. Such re-assessment of the ground for his self-inhibition, absent a showing of any malice or other improper motive on his part, could not be assailed as the product of an unsound exercise of his discretion. That, it seems to us, even the petitioners conceded, their objection being based only on whether he could still re-assume jurisdiction of Civil Case No. 5193.

We hold that although a trial judge who voluntarily inhibits loses jurisdiction to hear a case,[19] he or she may decide to reconsider the self-inhibition and re-assume jurisdiction after a re-assessment of the circumstances giving cause to the inhibition. The discretion to reconsider acknowledges that the trial judge is in the better position to determine the issue of inhibition, and a reviewing tribunal will not disturb the exercise of that discretion except upon a clear and strong finding of arbitrariness or whimsicality.[20] Thus, Judge Dabalos' re-assumption of jurisdiction was legally tenable, having come from his seizing the opportunity to re-assess the circumstances impelling his self-inhibition upon being faced with the urgent need to hear and resolve CBS's application for preliminary injunction. Such action was commendable on his part, given that the series of self-inhibitions by the other RTC Judges had left no competent judge in the station to hear and resolve the application. It can even be rightly said that a refusal by Judge Dabalos to re-assess and reconsider might have negated his sacred and sworn duty as a judge to dispense justice.

In this connection, the urgency for the RTC to hear and resolve the application for preliminary injunction factually existed. In fact, CBS had communicated it to the Court in its letter dated March 5, 2002,[21] to wit:

If not for the temporary restraining order issued on February 21, 2002 by the Honorable Judge VICTOR A. TOMANENG, Vice-Executive Judge and Presiding Judge of Branch 33 of said court xxx violent confrontations would have continued between supporters of plaintiff RADIO BOMBO BUTUAN, on the one hand, and the loyalists of City Mayor LEONIDES THERESA PLAZA (including some city employees) led by the Mayor herself and her husband, former Mayor DEMOCRITO PLAZA II, on the other hand.

xxx

As set forth in the temporary restraining order, the hearing on the application for a writ of preliminary injunction is set on Monday, March 11, 2002 because the twenty-day lifetime of the temporary restraining order would expire on March 13, 2002. A repeat of the violent scenario of February 21 may occur unless the application is heard as scheduled by a Regional Trial Court Judge who had not inhibited himself. xxx

Verily, Judge Dabalos' decision to hear the application for preliminary injunction pending the Court's resolution of the query on whether or not another Judge sitting outside the City of Butuan should take cognizance of Civil Case No. 5193 did not constitute or equate to arbitrariness or whimsicality. He had reasonable grounds to do so in the context of the tight circumstances that had developed in Civil Case No. 5193 following his self-inhibition. Surely, his decision to reconsider did not proceed from passion or whim, but from his faithful adherence to his solemn oath to do justice to every man. He thereby neither violated any law or canon of judicial conduct, nor abused his juridical authority.

II.

Petitioners to adduce evidence after granting of TRO

The petitioners submit that Judge Dabalos improperly resolved CBS's application for preliminary injunction by not first requiring the applicant to adduce evidence in support of the application.

We do not agree with the petitioners.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts.[22] It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory

injunction.[23] Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.[24]

As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected.[25] It is proper only when the applicant appears to be entitled to the relief demanded in the complaint,[26] which must aver the existence of the right and the violation of the right,[27] or whose averments must in the minimum constitute a prima facie showing of a right to the final relief sought.[28] Accordingly, the conditions for the issuance of the injunctive writ are: (a) that the right to be protected exists prima facie; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not in esse, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute.[29] Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.[30]

While it is true that CBS was not required to present evidence to prove its entitlement to the injunctive writ, the writ was nonetheless properly granted on the basis of the undisputed facts that CBS was a grantee of a franchise from the Legislature, and that the acts complained against (i.e., refusal of the Mayor's permit and resulting closure of the radio station) were imminent and, unless enjoined, would curtail or set at naught CBS's rights under the franchise. In this regard, worthy of mention is that even the Vice Executive Judge, acknowledging that CBS had stood to suffer grave injustice and irreparable injury should its radio station suffer closure, had issued ex parte the TRO.

It was error on the part of the petitioners to insist that the evidence of CBS should have first been required before Judge Dabalos issued the writ of preliminary injunction. Rule 58 of the Rules of Court clearly lays the burden on the shoulders of the petitioners, as the parties against whom the TRO was issued, to show cause why the application for the writ of preliminary injunction should not issue,[31] thus:

Section 5. Preliminary injunction not granted without notice; exception. -- No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

xxx

In fine, Judge Dabalos properly directed the petitioners to first present evidence why the application for the writ of preliminary injunction should not be granted. By their refusal to comply with the directive to show cause by presenting their evidence to that effect, the petitioners could blame no one but themselves.

WHEREFORE, we deny the petition for review on certiorari, and affirm the decision dated October 28, 2002 promulgated by the Court of Appeals in C.A.-G.R. SP No. 69729.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and Aranal-Sereno, JJ., concur.

[1] Rollo, pp. 37-47; penned by Associate Justice Cancio C. Garcia (later Presiding Justice and a Member of the Court, but already retired), and concurred in by Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Sergio L. Pestaño (retired and deceased).

[2] This rendition is largely based on the narration made in appealed decision of the CA.

[3] Rollo, pp. 103-104.

[4] Id., pp. 72-83.

[5] Id., pp. 106-108.

[6] Id., p. 42.

[7] Id., p. 111.

[8] Id., pp. 109-110.

[9] Id., pp. 116-117.

[10] Id., pp. 119-124.

[11] Id., p. 45.

[12] Id., p. 46.

[13] Id., pp. 127-133.

[14] Id., p. 133.

[15] Id., p. 47.

[16] Id., pp. 23-24.

[17] Id., p. 53.

[18] G.R. No. 124760, July 8, 1998, 292 SCRA 76.

[19] *Alcantara v. Tamin*, A.M. No. RTJ-95-1305, April 21, 1995, 243 SCRA 549, 550.

[20] In the cited case of *Gutang v. Court of Appeals*, *supra*, at p. 85, the Court observed:

In the final reckoning, there is really no hard and fast rule when it comes to the inhibition of judges. Each case should be treated differently and decided based on its peculiar circumstances. The issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge. It is a subjective test the result of which the reviewing tribunal will not disturb in the absence of any manifest finding of arbitrariness and whimsicality. The discretion given to trial judges is an acknowledgment of the fact that these judges are in a better position to determine the issue of inhibition as they are the ones who directly deal with the parties-litigants in their courtrooms.

[21] Rollo, pp. 120-121.

[22] *Levi Strauss & Co. v. Clinton Aparelle Inc.*, G.R. No. 138900, September 20, 2005, 470 SCRA 236.

[23] Lee Hiong Wee v. Dee Ping Wee, G.R. No. 163511, June 30, 2006, 494 SCRA 258.

[24] Levi Strauss & Co. v. Clinton Aparelle Inc, *supra*.

[25] Saulog v. Court of Appeals, G.R. No. 119769, September 18, 1996, 262 SCRA 51.

[26] Toyota Motor Philippines Corporation v. Court of Appeals, G.R. No. 102881, December 7, 1992, 216 SCRA 236.

[27] Lopez v. Court of Appeals, G.R. No. 110929, January 20, 2000, 322 SCRA 686.

[28] Buayan Cattle Co., Inc. v. Quintillan, L-26970, March 19, 1984, 128 SCRA 276.

[29] 43 CJS Injunctions § 18.

[30] Orocio v. Anguluan, G.R. NO. 179892-93, January 30, 2009, 577 SCRA 531.

[31] See also Lee v. Court of Appeals, G.R. No. 147191, July 27, 2006, 496 SCRA 668, 699.

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