

PAGODA PHILIPPINES, INC., PETITIONER, VS. UNIVERSAL CANNING, INC., RESPONDENT.

G.R. NO. 160966. October 11, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Rules on voluntary inhibition do not give judges the unfettered discretion to desist from hearing a case. The motion for inhibition must be grounded on just and valid causes. The mere imputation of bias or partiality is not enough basis for them to inhibit, especially when the charge is groundless.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the August 14, 2003 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 77514 and the November 24, 2003 Resolution[3] denying petitioner's Motion for Reconsideration. The decretal portion or fallo of the assailed Decision reads as follows:

"WHEREFORE, foregoing considered, the instant petition for mandamus is hereby GRANTED. Public respondent's Order dated May 22, 2003, voluntarily inhibiting himself from the case is hereby SET ASIDE. Public respondent is DIRECTED to continue hearing the case and dispose of the same with utmost dispatch."

The Facts

The facts are narrated by the CA as follows:

"[Petitioner] filed a civil complaint against [respondent] for Trademark Infringement, False Representation and Unfair Competition with Damages and Injunction. The case was docketed as Civil Case [N]o. 02-102988.

"[Petitioner] claimed that [respondent's] "Family's Brand" Sardines is confusingly similar with [petitioner's] "Family Brand" Sardines. [Petitioner] insisted that it has superior right to use the trademark "Family" than [respondent].

"[Respondent] filed an "Answer with Compulsory Counter-claim and Motion to Dismiss and Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction."

"[Respondent] prayed that [petitioner] be enjoined from using the trademark "Family" and to pay damages. [Respondent] further asked [Judge Antonio M. Eugenio, Jr.] to set the hearing for its motion to dismiss the action on the grounds of lack of authority of the affiant of the complaint to institute the action, insufficient verification and failure to exhaust administrative remedies.

"After hearing, [Judge Eugenio] issued a temporary restraining order enjoining [petitioner] to use the trademark "Family."

"On March 21, 2003, [Judge Eugenio] dismissed without prejudice, [petitioner's] complaint on the ground of insufficient verification as invoked by [respondent].

"[Respondent] filed a motion for reconsideration of the Order dismissing [petitioner's] complaint, claiming that the defect in the verification has been rendered moot and academic by subsequent rulings respective to the application for preliminary injunction and that the attending circumstances of the case warrant liberal compliance [with] the rule.

"[Petitioner] filed a "Motion for Voluntary Inhibition," requesting [Judge Eugenio] to inhibit himself from proceeding to hear, try and decide the pending incidents of the case to afford [petitioner] an impartial trial.

"[Respondent] opposed [petitioner's] "Motion for Voluntary Inhibition."

"On May 22, 2003, [Judge Eugenio] issued an Order voluntarily inhibiting himself from further hearing the case.

"Hence, [the] petition [filed with the CA] by [respondent] for mandamus to compel [Judge Eugenio] to continue to hear the pending incidents of the case."[4]

Ruling of the Court of Appeals

Finding no valid and just reason for the voluntary inhibition of Judge Eugenio, the CA issued the writ of mandamus. It ruled that the present case fell within the exception that mandamus would lie in instances of gross abuse of discretion.

Hence, this Petition.[5]

Issue

The issue was worded by petitioner in this wise:

"The principal issue raised by the petitioner for this Honorable Court to resolve is whether or not a petition for mandamus is the proper remedy to assail a purely discretionary act of Judge Antonio Eugenio, Jr. of voluntarily inhibiting himself from hearing Civil Case No. 02-102988 and corollary thereto, whether Judge Eugenio, Jr. who inhibited himself in accordance with the law and the Rules, can be compelled to perform an act he had already decided not to do with the intention of assuring the litigants of an impartial trial."[6]

The Court believes that there are actually two issues to be settled in this case: first, whether mandamus is the proper remedy to assail an order of voluntary inhibition; and second, whether there was a valid and just reason for the voluntary inhibition of the trial court judge.

The Court's Ruling

The Petition is unmeritorious.

First Issue: Remedy Against the Order of Voluntary Inhibition

At the outset, we note that petitioner, in an effort to cover its bases, filed the present Petition as both a petition for review under Rule 45 and a petition for certiorari under Rule 65 of the Rules of Court. The applicable rule is Rule 45, which clearly provides that decisions, final orders or resolutions of the CA in any case -- regardless of the nature of the action or proceeding involved -- may be appealed to this Court through a petition for review. This remedy is a continuation of the appellate process over the original case.[7] "It is basic that where Rule 45 is available, and in fact availed of as a remedy -- as in this case -- recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal."[8]

The procedural infirmity notwithstanding, this Court shall deal with this Petition as one filed under Rule 45 only and shall treat the alleged grave abuse of discretion on the part of the CA as an allegation of reversible error.

Petitioner claims that respondent erred when the latter questioned the trial judge's Order of Voluntary Inhibition --supposedly a purely discretionary act -- through a Petition for Mandamus filed with the CA.

While, ordinarily, mandamus will not prosper to compel a discretionary act, the writ shall issue in instances of gross abuse of discretion, manifest injustice or palpable excess of authority, equivalent to denial of a settled right to which petitioner is entitled; and when there is no other plain, speedy and adequate remedy.[9] This Court has recognized that "[a] judge's decision to refuse to act on account of some disqualification is not conclusive, and his competency may be determined on an application for mandamus to compel him to act." [10]

Second Issue: Inhibition

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."

The Rules contemplate two kinds of inhibition: compulsory and voluntary. Under the first paragraph of the cited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The second paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[11]

In *Umale v. Villaluz*, [12] the Court traced the history of the second paragraph of the above-quoted provision, which had been added only as an amendment to the Rules of Court in 1964. Prior to that year, the question on whether to take cognizance of the case did not depend upon the discretion of the judges not legally disqualified to sit in a given case. If those concerned were not disqualified, it was their official duty to proceed with the case or else risk being called upon to account for their dereliction. They could not voluntarily inhibit themselves on grounds of prejudice or bias, extreme delicacy, or even if they themselves took great interest and an active part in the filing of the case. *Gutierrez v. Santos* [13] and *Del Castillo v. Javelona* [14] paved the way for the recognition of other circumstances for disqualification --those that depended upon the exercise of discretion of the judges concerned.

The judges' right, however, 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. 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." [15]

A perusal of the records of the case fails to reveal that any bias or prejudice motivated Judge Eugenio in issuing the Writ of Preliminary Injunction in favor of respondent or in dismissing petitioner's Complaint. Neither did this Court find any questionable or suspicious circumstances leading to the issuance of those Orders, as suggested by petitioner.

This Court has repeatedly held that for bias and prejudice to be considered valid reasons for the voluntary

inhibition of judges, mere suspicion is not enough. Bare allegations of their partiality will not suffice "in the absence of clear and convincing evidence to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor." [16]

In his questioned Order of Inhibition, Judge Eugenio himself satisfactorily clarified his actuations and the circumstances leading to the issuance of the questioned injunction and Order of dismissal. Obviously not believing that he had been motivated by bias or prejudice, he nonetheless granted petitioner's Motion to Inhibit. Understandably, he did so with the intention to uphold the integrity of the judiciary as an institution worthy of public trust and confidence. Under the circumstances, however, to affirm his Order of Inhibition would open the floodgates to a form of forum-shopping, in which litigants would be allowed to shop for a judge more sympathetic to their cause.[17] Such action would be antithetical to the speedy and fair administration of justice.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision AFFIRMED. Costs against petitioner.

Sandoval-Gutierrez, Corona, Carpio Morales, and Garcia, JJ., concur.

[*] Filed as a remedy under both Rule 45 and Rule 65 of the Rules of Court, the Petition included the Court of Appeals as a respondent. Since the proper remedy is a petition for review under Rule 45, this Court has omitted the CA from the title of the case in accordance with Section 4 of Rule 45 of the Rules of Court.

[1] Rollo, pp. 21-34.

[2] Id., pp. 7-15. Fifth Division. Penned by Justice Eugenio S. Labitoria (Division chair) and concurred in by Justices Elvi John S. Asuncion and Lucas P. Bersamin (members).

[3] Id., pp. 17-18.

[4] Id., pp. 7-9.

[5] The case was deemed submitted for decision on November 18, 2004, upon receipt by this Court of respondent's Memorandum signed by Attys. Victor L. Chan and Redentor R. Romero. Petitioner's Memorandum, signed by Atty. Rafael Arsenio S. Dizon, was received by the Court on October 6, 2004.

[6] Petitioner's Memorandum, p. 6; rollo, p. 286.

[7] *Heirs of Pagobo v. CA*, 345 Phil. 1119, 1132, October 16, 1997.

[8] *Esguerra v. CA*, 335 Phil. 58, 75, February 3, 1997, per Panganiban, J.

[9] *First Philippine Holdings Corporation v Sandiganbayan*, 323 Phil. 36, 55, February 1, 1996.

[10] Query of Executive Judge Estrada, Regional Trial Court of Malolos, Bulacan, on the Conflicting Views of Regional Trial Court - Judges Masadao and Elizaga Re: Criminal Case No. 4954-M, 155 SCRA 72, 80, October 26, 1987, per Gutierrez, J.

[11] *Gochan v. Gochan*, 446 Phil. 433, 446, February 27, 2003; *People v. Kho*, 357 SCRA 290, 296, April 20, 2001.

[12] 151-A Phil. 563, 568, May 25, 1973; see also Agpalo, *Legal Ethics* (5th ed., 1992), p. 448.

[13] 112 Phil. 184, May 30, 1961.

[14] 116 Phil. 451, September 29, 1962.

[15] *Gochan v. Gochan*, supra, p. 447, per Panganiban, J. (citing *People v. Kho*, supra; *Gohu v. Spouses Gohu*, 397 Phil. 126, October 13, 2000; and *Abdula v. Guiani*, 382 Phil. 757, February 18, 2000.)

[16] *People v. Kho*, supra, p. 297, per Kapunan, J. (citing *People v. CA*, 369 Phil. 150 July 2, 1999; *Webb v. People*, 342 Phil. 206, July 24, 1997; *People v. Tabarno*, 312 Phil. 542, March 20, 1995; *Abad v. Belen*, 240 SCRA 733, January 30, 1995; *Go v. CA*, 221 SCRA 397, April 7, 1993.)

[17] *Chin v. CA*, 409 SCRA 206, 215, August 15, 2003.

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