MAKILITO B. MAHINAY, PETITIONER, VS. HON. IRENEO LEE GAKO, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 5, CEBU CITY AND JOCELYN B. SORENSEN, RESPONDENTS.

G.R. No. 165338. November 28, 2011

Ponente: DEL CASTILLO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-165338/

DEL CASTILLO, J.:

These consolidated petitions pertain to a legal tug-of-war between persons trying to wrest possession of a coveted Torrens certificate of title, and its collateral effect to the judge who heard their case.

In G.R. No. 165338, Makilito B. Mahinay (Mahinay), thru a petition for certiorari[1] directly filed with this Court, seeks to nullify the December 12, 2003 Resolution[2] of the Regional Trial Court (RTC), Branch 5, Cebu City in Civil Case No. CEB-16335. The questioned RTC Resolution denied Mahinay's motion to compel Jocelyn B. Sorensen (Sorensen) to produce and turn over to him the owner's copy of Transfer Certificate of Title (TCT) No. 117531.[3] In the same petition, Mahinay also charges respondent Judge Ireneo Lee Gako, Jr. (Judge Gako) with gross ignorance of the law, abdication of judicial duty, and failure to resolve a motion within the period prescribed by law.

Mahinay likewise assails the July 20, 2004 Order[4] of the RTC denying his Motion for Reconsideration.[5]

In G.R. No. 179375, Sorensen on the other hand seeks to reverse and set aside the April 24, 2007 Resolution[6] of the Court of Appeals (CA) which dismissed her Petition for Certiorari[7] in CA-G.R. CEB-SP No. 02193. Sorensen filed said certiorari petition after Judge Gako volte faced and issued an Order[8] dated September 1, 2006 ordering her to surrender to Mahinay TCT No. 117531.

Sorensen likewise challenges the August 3, 2007 Resolution[9] of the CA denying her Motion for Reconsideration.[10]

Factual Antecedents

Constantina H. Sanchez, Josefina H. Lopez and Susan Honoridez are the registered owners (the owners) of a 406-square meter parcel of land known as Lot 5 located in Cebu City and covered by TCT No. 117531. On July 25, 1994, Mahinay filed a complaint[11] for specific performance (docketed as Civil Case No. CEB-16335) against the owners and one Felimon Suarez (Suarez), to compel them to convey Lot 5 to him.

In said complaint, Mahinay alleged that in an earlier case[12] he filed against the owners, the parties therein arrived at a Compromise Agreement wherein the owners gave him preferential right to buy a 200-square meter portion of Lot 5 on condition that he will withdraw said case. On February 8, 1993, the trial court thus issued a Judgment[13] based on said Compromise Agreement.

On November 9, 1993, however, the owners sold the entire Lot 5 to Suarez for P300,000.00 without first offering the same to Mahinay. According to Mahinay, said transaction violated his preferential right to buy as he was

willing and capable of buying the property. To bolster his claim, Mahinay attached to his second complaint the February 8, 1993 Judgment in the earlier case and a notarized Deed of Absolute Sale[14] dated November 9, 1993 between the owners and Suarez.

During the pendency of Civil Case No. CEB-16335, Mahinay filed an Ex-Parte Manifestation and Motion[15] informing the RTC that he caused the annotation of an adverse claim and then a Notice of Lis Pendens[16] on TCT No. 117531 on August 17, 1994.

In traversing Mahinay's allegations, the owners asserted that they did not violate Mahinay's preferential right to buy as the transaction between them and Suarez was actually an equitable mortgage, and not a sale. In support of their defense of equitable mortgage, the owners averred that they remained the occupants and registered owners of Lot 5 and that TCT No. 117531 has always been in their possession. With regard to the execution of the alleged Deed of Absolute Sale, the owners explained that Suarez merely imposed the same as one of the conditions before granting the loan application. To prove their theory of defense, the owners submitted an Acknowledgement Receipt[17] dated September 1, 1994 wherein Suarez declared that no sale between him and the owners actually pushed thru and a letter[18] dated September 20, 1994 wherein the owners asked the Bureau of Internal Revenue for the refund of the capital gains and documentary stamp taxes they earlier paid.

Mahinay riposted, postulating that the Deed of Absolute Sale he attached to his Complaint sufficiently confutes the owners' defense of equitable mortgage. Besides, the owners and Suarez failed to deny under oath the authenticity and due execution of said Deed of Absolute Sale. [19]

On June 7, 1996, the RTC rendered a Decision[20] debunking the owners' theory of equitable mortgage. It held that the notarized documents Mahinay presented, particularly the Deed of Absolute Sale, outweigh the owners' evidence consisting of private documents. Its dispositive portion reads:

> WHEREFORE, this [C]ourt declares [Mahinay] as being entitled to redeem Lot No. 5 from defendant Felimon Suarez.
>
> Defendant Felimon Suarez, his heirs, successors and assigns are hereby directed to execute the Deed of Conveyance, such papers and documents necessary for the transfer of the title of the said lot to [Mahinay] upon the deposit before this Court of the same consideration as stated in the Deed of Absolute Sale of the same lot between defendant Suarez and the other defendants.
>
> No pronouncement as to costs.
>
> SO ORDERED.[21]

The owners and Suarez moved for reconsideration.[22] On November 22, 1996, however, the RTC denied the same.[23]

Unhappy, they appealed to the CA.[24] Finding no reversible error therefrom, the CA affirmed the ruling of the RTC in a Decision[25] dated December 29, 2000, which became final and executory on February 8, 2001.[26]

About a year later, Mahinay and Suarez filed a Joint Manifestation[27] informing the RTC that in compliance with its Decision, Suarez executed a Deed of Conveyance[28] in favor of Mahinay, who, in turn, deposited with the RTC the amount of P300,000.00.[29]

Thereafter, to pave the way for the complete implementation of the RTC's final Decision and have Lot 5 registered in his name, Mahinay filed on February 7, 2002 an Omnibus Motion[30] seeking to compel the owners to vacate the property and turn over to him the owner's copy of TCT No. 117531. On March 12, 2002, the RTC, then already presided by Judge Gako, issued a Resolution[31] granting Mahinay's motion. Thus:

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> WHEREFORE, in view of the foregoing, defendants Susan Honoridez, Constantina Sanchez and Josefina Lopez are directed to turn over the Owner's Duplicate Copy of the Certificate of Title of Lot 5 to [Mahinay], and to vacate the premises thereof in favor of the latter within thirty (30) days from receipt of this resolution.[32]

Pursuant to said Resolution, the branch sheriff placed Mahinay in actual and physical possession of the entire Lot 5. However, TCT No. 117531 could not be surrendered to him as the same was already in possession of Sorensen by virtue of a Real Estate Mortgage executed by the owners subsequent to the filing of Mahinay's complaint.[33]

Whereupon, Mahinay filed a Motion to Issue an Order Directing Sorensen to Turn Over TCT No. 117531[34] to him. This drew Sorensen's Opposition,[35] to which Mahinay tendered his Reply.[36]

On December 12, 2003, Judge Gako issued the assailed Resolution[37] in G.R. No. 165338 denying Mahinay's motion, the pertinent portions of which read:

> The court indeed believes that a mortgage lien is superior to a Notice of Lis Pendens pursuant to Article 2126 of the Civil Code, which provides that the mortgage directly and immediately subjects the property upon which it is imposed to the fulfilment of the obligation for whose security it was constituted. Article 2129 also provides that the creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said person possesses. In short, not even a sale or transfer of the mortgaged property can affect or release the mortgage because the purchasers are necessarily bound to acknowledge and respect the encumbrance of a recorded real estate mortgage, whether the sale or transfer to them be with or without the consent of the mortgagee.
>
> WHEREFORE, in view of the foregoing, [Mahinay's] Motion to Direct Jocelyn B. Sorensen to turn over Transfer Certificate of Title No. 117531 to the sheriff is hereby denied.

On January 12, 2004, Mahinay filed a Motion for Reconsideration[38] of the December 12, 2003 Resolution followed by a Supplemental Arguments in Support of the Motion for Reconsideration.[39] Sorensen opposed[40] the motion and to which opposition, on January 20, 2004, Mahinay replied.[41]

Raring to end his decade long legal battle, Mahinay filed on April 19, 2004 an Ex-parte Motion for Early Resolution.[42] A month later, Mahinay filed a Second Ex-Parte Motion for Early Resolution,[43] furnishing the Court Administrator a copy thereof with express reservation of making the same as his formal administrative complaint in the future.

On July 20, 2004, what seemed to be an interminable wait for Mahinay finally ended, albeit with unwanted result on his part – Judge Gako came up with a one-page Order[44] denying his Motion for Reconsideration.

Aggrieved yet still refusing to concede defeat, Mahinay directly went to this Court on October 8, 2004 by filing a petition for certiorari under Rule 65 of the Rules of Court against Sorensen and Judge Gako. He raises the following matters for consideration of this Court:

> I.
>
> RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING THE RESOLUTION AND ORDER DATED DECEMBER 12, 2003 AND JULY 20, 2004 (ANNEXES A AND B RESPECTIVELY), WHEREBY, ASIDE FROM REFUSING TO PERFORM A MINISTERIAL DUTY TO IMPLEMENT THE FINAL AND EXECUTORY DECISION IN CEB-16335, HE AMENDED THE SAME AND MADE ERRONEOUS CONCLUSIONS OF LAW, INDICATIVE OF GROSS IGNORANCE OF THE LAW CHARACTERIZED WITH DISHONESTY, FRAUD AND BAD FAITH.

II.

RESPONDENT JUDGE IS GUILTY OF VIOLATING THE CONSTITUTIONAL PROVISION REQUIRING JUDGES TO DECIDE PENDING INCIDENTS WITHIN NINETY (90) DAYS FROM DATE OF SUBMISSION.

III.

THAT PETITIONER HAS NO APPEAL [OR] OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY AGAINST THE QUESTIONED RESOLUTION AND ORDER OF RESPONDENT COURT SOUGHT TO BE NULLIFIED IN THIS PETITION.[45]

During the pendency of G.R. No. 165338, or on August 29, 2006, Mahinay filed with the RTC a Reiteratory Motion to Compel Jocelyn "Joy" B. Sorensen to Surrender Owner's Duplicate Copy of TCT No. 117531.[46] In persuading Judge Gako to reconsider his earlier position, Mahinay alleged that in a related case[47] filed by the owners which eventually reached the Supreme Court and docketed as G.R. No. 153762,[48] this Court held that the Decision in Civil Case No. CEB-16335 had long become final and executory, thereby erasing any doubt that the transaction between the owners and Suarez was indeed a contract of sale. For Mahinay, this Court's ruling in G.R. No. 153762 is a supervening event which would justify Judge Gako to reconsider his earlier position on the matter of directing Sorensen to hand over to him the owner's copy of TCT No. 117531. He also suggested that if Judge Gako would grant his motion, the administrative charge of gross ignorance of the law against the good judge would become moot.

Apparently persuaded by Mahinay's formulations, Judge Gako granted his Reiteratory Motion on September 1, 2006.[49]

It thus became Sorensen's turn to file a Motion for Reconsideration.[50] She contended that Mahinay violated the rule against forum shopping as the relief sought in aforesaid Reiteratory Motion is the same relief prayed for in G. R. No. 165338. She also pointed out that Judge Gako gravely abused his discretion in granting said motion for he effectively pre-empted the action of the Supreme Court in G.R. No. 165338. With regard to the Decision of this Court in G.R. No. 153762, Sorensen argued that the same is not conclusive as to whether she cannot remain in possession of the disputed TCT.

After Mahinay filed his Opposition,[51] Judge Gako issued an Order[52] dated September 18, 2006 denying Sorensen's Motion for Reconsideration.

Sorensen thus filed with the CA a petition for certiorari[53] assailing Judge Gako's September 1, 2006 Order granting Mahinay's Reiteratory Motion. In said petition, she gave her version of the story as follows –

> In October 1994, [the owners] approached [Sorensen] in order to obtain a loan from her. So the former offered Lot No. 5, Block 68 of the Subdivision Plan, now subject of this case, as a security or collateral to said loan. In procuring said loan, the said [owners] showed to [Sorensen] a true copy of their title over said property, T.C.T. No. 11753.
>
> After some negotiation[s], [Sorensen], in utmost good faith, relying on the fact that there [is] no adverse annotation at the back of said title, agreed to extend to them a loan. As a matter of fact, [Sorensen] released to said mortgagors a loan of P709,827.00. Thereafter, a real estate mortgage was executed by said mortgagors in favor of [Sorensen] as mortgagee to said loan.
>
> [Sorensen], in good faith, received the owner's duplicate original copy of said T.C.T. No. 117531 from [the owners] which when presented and shown to [Sorensen], the same did not contain any adverse claim over the property to be mortgaged to her; and, until now, the said owner's duplicate original copy of said title is in

> actual custody of [Sorensen];
>
> Upon default of [the owners] in the payment of said loan, [Sorensen] instituted an extra-judicial foreclosure over the said mortgaged property.
>
> During the public auction of said mortgaged property, [Sorensen] became the lone and highest bidder. Consequently, the Court Sheriff issued the said certificate of sale dated November 12, 2004 in favor of [Sorensen] stating therein that [Sorensen] was the lone and highest bidder over the land sold in public auction for P3,362,633.00.
>
> With the issuance of said certificate of sale, [Sorensen] became entitled to possess the mortgaged property which she acquired in a public auction;
>
> It is at this juncture, when [Mahinay] asked the Honorable public respondent Judge to compel [Sorensen] to surrender the said owner's duplicate original copy of T.C.T. 117531 but the latter in its order dated July 20, 2004 denied said motion. A motion for reconsideration was filed but the same was denied.
>
> Subsequently, [Mahinay] filed a petition for certiorari dated September 21, 2004 with the Supreme Court docketed as G.R. No. 165338 entitled "Makilito B. Mahinay vs. Hon. Ireneo Lee Gako, Jr., Presiding Judge of RTC-Branch 5, Cebu City and Jocelyn B. Sorensen" questioning the propriety of the issuance of said order dated January 6, 2004 which denied the motion to compel petitioner to surrender T.C.T No. 117531.
>
> Despite the fact that the said petition for certiorari is still pending and not yet resolved by the Supreme Court until the present, the Honorable public respondent Judge issued the questioned order dated September 1, 2006 directing herein petitioner to surrender T.C.T. No. 117531 which virtually sets aside his previous order dated January 6, 2004 which is now the subject of said petition for certiorari before the Supreme Court. [54]

In a Resolution[55] promulgated on April 24, 2007, however, the CA outrightly dismissed Sorensen's petition for her failure to state that the allegations in her petition are true and correct not only based on her personal knowledge but also based on authentic records.

Sorensen filed a Motion for Reconsideration[56] and to remedy the defect in her petition submitted an Amended Petition[57] with corrected verification. But the CA was not moved by Sorensen's subsequent compliance and, consequently, denied her motion in a Resolution[58] dated August 3, 2007. Hence, the petition for review on certiorari in G.R. No. 179375 where Sorensen advances the following arguments:

> First Reason/Argument
>
> THAT THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION FOR CERTIORARI FOR FAILING TO STATE IN ITS VERIFICATION PORTION THE PHRASE 'OR BASED ON AUTHENTIC RECORDS' AS REQUIRED IN SECTION 4, RULE 7 OF THE 1997 RULES ON CIVIL PROCEDURE AS AMENDED BY AM NO. 00-2-10-SC [E]SPECIALLY SO WHEN PETITIONER HAD ALREADY FILED AN AMENDED PETITION FOR CERTIORARI WITH THE CORRECTED VERIFICATION PORTION THIS TIME CONTAINING THE PHRASE "BASED ON AUTHENTIC RECORDS";
>
> Second Reason/Argument
>
> THAT THE RESPONDENT COURT OF APPEALS FURTHER COMMITTED A GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THAT THE RESOLUTION OF THE ISSUES INVOLVED IN THE DISMISSED PETITION FOR CERTIORARI IS MORE THAN ENOUGH REASON TO LIBERALIZE THE STRINGENT REQUIREMENT OF VERIFICATION OF A PETITION FOR CERTIORARI PURSUANT TO SECTION 4, RULE 7 OF THE 1997 RULES ON CIVIL PROCEDURE AS AMENDED BY AM No. 00-2-10-SC;[59]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

In a Resolution[60] dated July 21, 2008, this Court ordered the consolidation of G.R. Nos. 165338 and 179375.

Parties' Arguments

In G.R. No. 165338, Mahinay argues that the final and executory Decision[61] dated June 7, 1996 in Civil Case No. CEB-16335 pronounced in no uncertain terms that the November 9, 1993 transaction between the owners and Suarez was a contract of sale. Hence, said owners could not have validly mortgaged Lot 5 on November 27, 1994 as they are no longer the owners thereof at that time. Unfortunately, Judge Gako not only failed to comprehend the implication of such pronouncement by still recognizing the mortgage, he also effectively modified the final and executory judgment in Civil Case No. CEB-16335.

Mahinay also contends that Judge Gako committed serious and egregious error in ruling that the mortgage is superior to the previously annotated adverse claim and Notice of Lis Pendens. He continues that Judge Gako is guilty of gross ignorance of the law, evident bad faith, fraud, and dishonesty. Mahinay asserts that it is an elementary rule which ought to be known by lawyers and judges that a final and executory judgment is unalterable. However, Judge Gako deliberately ignored such basic rule and even feigned ignorance of the common rules on adverse claim and lis pendens.

Lastly, Mahinay accuses Judge Gako of unjustifiably sitting on his Motion for Reconsideration. He claims that he filed his Motion for Reconsideration on January 12, 2004 while Sorensen filed her opposition thereto on January 20, 2004. The issues raised in said motion are not difficult to resolve, yet Judge Gako issued his single-page Order denying said motion only on July 20, 2004. What is more, Judge Gako did not report to the Supreme Court that he had a pending motion which remained unresolved beyond the constitutionally mandated 90-day period for resolving motions.

For her part, Sorensen stands by the RTC and argues that a mortgage lien is superior to a notice of lis pendens; that she is not bound by the Decision in Civil Case No. CEB-16335 as she is not a party thereto; and, that she is an innocent mortgagee for value entitled to remain in possession of TCT No. 117531. Sorensen also points out that the delay in the resolution of Mahinay's motion only shows that Judge Gako meticulously studied the case.

Sorensen claims that in filing his Reiteratory Motion, Mahinay violated the rule on exhaustion of administrative remedies. She argues that the proper remedy to obtain unlawfully withheld duplicate certificate of title is to file a case in accordance with Section 107[62] of Presidential Decree (PD) No. 1529.[63]

Lastly, Sorensen calls our attention to the Comment/Manifestation[64] Suarez

filed in G.R. No. 153762 wherein he affirmed that the transaction between him and the owners was a mere mortgage; that he received the amount of P419,500.00 from Sorensen as redemption price for the mortgaged property; and, that he in turn gave to her the owner's duplicate copy of TCT No. 117531.

Our Ruling

The grant of Mahinay's Reiteratory Motion rendered G.R. No. 165338 moot.

In G.R. No. 165338, Mahinay essentially seeks to nullify the December 12, 2003 Resolution[65] of Judge Gako which denied his motion to compel Sorensen to turn over to him TCT No. 117531. During the pendency of G.R. No. 165338, however, Mahinay filed his Reiteratory Motion with the same objective – to compel Sorensen to surrender to him the coveted TCT. On September 1, 2006, Judge Gako issued an Order[66] granting Mahinay's Reiteratory Motion and directing Sorensen to turn over to him subject TCT. Sorensen moved for a reconsideration which Judge Gako denied until, eventually, Sorensen came to this Court. Such a change of heart on the part of Judge Gako negated Mahinay's contention that the honorable magistrate committed grave abuse of discretion in

denying his motion to compel Sorensen to turn over to him TCT No. 117531. It also effectively mooted his petition. Thus, we have no other recourse but to dismiss G.R. No. 165338. In Gancho-on v. Secretary of Labor and Employment,[67] this Court pronounced that –

> It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.

At this point it may not be amiss to add (though no longer contested in these petitions) that Mahinay further continued to pursue his quest at the trial court level to have TCT No. 117531 in his possession. On November 14, 2007, he filed a motion[68] praying for the issuance of a writ of possession directing the sheriff to take possession of the owner's copy of TCT No. 117531. This was granted by the RTC in an Order[69] dated March 26, 2008. After serving the writ, the sheriff made a return[70] informing the RTC that Sorensen refused to surrender the certificate of title.

Mahinay then changed tack and filed a motion to declare the title in Sorensen's possession as null and void and in lieu thereof to issue a new one under his name.[71] In an Order[72] dated September 5, 2008, the RTC granted the motion, the dispositive portion of which reads:

> WHEREFORE, the Motion to declare as null and void the owner's duplicate copy of Transfer Certificate of Title No. 117531, dated 5 August 2008, filed by plaintiff, is granted.
>
> The title of Lot No. 5, Block 68, is ordered transferred to the name of plaintiff, MAKILITO B. MAHINAY, pursuant to the Deed of Conveyance, attached as Annex "A" to the Motion, without the need of surrendering the owner's duplicate copy of the said title, TCT No. 117531.
>
> The owner's duplicate copy of TCT No. 117531 is declared null and void, and the Register of Deeds, Cebu City, is ordered to issue a new owner's duplicate containing a memorandum to this effect.
>
> Notify all the parties concerned of this order and the Office of the Register of Deeds of Cebu City, for its compliance.
>
> SO ORDERED.[73]

This sequence of events which transpired during the pendency of G.R. No. 165338 all the more rendered it moot.

The administrative charges of gross ignorance of the law and abdication of a judicial duty lack merit; the administrative charge of failure to resolve a motion within the prescribed period should be referred to the Office of the Court Administrator for appropriate action.

Mahinay accuses Judge Gako, among others, of gross ignorance of the law and abdication of judicial duty. From the facts of these cases as set out above, however, it is quite obvious that Mahinay would not have accused Judge Gako of such charges had the judge ruled in his favor. It should be recalled that Mahinay first cocked the gun, so to speak, when he filed his Second Ex-Parte Motion for Early Resolution[74] intimating to Judge Gako that he was contemplating on filing an administrative charge against the magistrate before the Office of the Court Administrator. Then he filed his Rule 65 petition in G.R. No. 165338 incorporating therein aforesaid administrative charges against Judge Gako. Yet during the pendency of said petition Mahinay filed with the RTC his Reiteratory Motion alleging that –

> THE GRANT OF THIS REITERATORY MOTION, IT IS BELIEVED, WILL HAVE THE EFFECT OF RENDERING MOOT AND ACADEMIC THE ADMINISTRATIVE CHARGE AGAINST THE PRESIDING JUDGE OF THIS HONORABLE COURT IN G.R. No. 153762 [sic].[75]

Indubitably, Mahinay's allegations of gross ignorance of the law and abdication of judicial duty are not based on his sincere and strong belief that Judge Gako should be disciplined. They are mere ploys calculated to induce Judge Gako to grant his motion. We cannot countenance such lamentable scheme of Mahinay. It is settled that disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies. Administrative complaints are not intended to coerce judges to rule in complainant's favor. Fittingly, we reiterate our pronouncement in Atty. Flores v. Hon. Abesamis:[76]

> Law and logic decree that "administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof." Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and dispositions they may make in the performance of their duties and functions; and it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, prosecution of the judge can be had only if "there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and also evidence of malice or bad faith, ignorance or inexcusable negligence, on the part of the judge in rendering said judgment or order" x x x.

Indeed, unless it can be shown that their acts are tainted with bad faith, malice or corrupt purpose, judges cannot be held administratively liable for rendering an erroneous judgment[77] simply because they are not infallible.[78]

Instead of threatening Judge Gako with administrative charges, Mahinay could have simply awaited the resolution of G.R. No. 165338. Unfortunately, as earlier discussed, his own impatience mooted G.R. No. 165338.

With regard to Judge Gako's alleged tardiness in resolving the Reiteratory Motion, it cannot escape our attention, however, that he was never given a chance to comment or answer the complaint against him. Thus, we cannot resolve the administrative charge of failing to resolve the motion on time without trifling with his constitutionally enshrined right to due process.

> The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.[79]

For the expeditious and orderly conduct of proceedings, therefore, we find it appropriate to refer said administrative charge to the Office of the Court Administrator for appropriate action.

The Court of Appeals did not err in dismissing
Sorensen's petition for certiorari.

With regard to G.R. No. 179375, Sorensen admits that due to inadvertence she failed to state in the verification portion of her petition that the allegations therein are true and correct based on authentic records. Nonetheless, such omission, according to Sorensen, does not justify the outright dismissal of her petition. She posits that the purpose of verification is simply to secure an assurance that the allegations in the pleading are true and correct. Thus, "the requirement that a petition for certiorari be verified is not an absolute necessity where the material facts alleged are a matter of records and all the questions raised are mainly of law,"[80] just like in her CA

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

petition. After all, the absence of verification is a mere formal, not jurisdictional, defect.

Sorensen misses the point.

The rule requiring certain pleadings to be verified is embodied in Section 4, Rule 7 of the Rules of Court. It reads:

> SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Verification of pleading is not an empty ritual bereft of any legal importance. It is intended to secure an assurance that the allegations contained in the pleading are true and correct; are not speculative or merely imagined; and have been made in good faith.[81] A pleading may be verified by stating that the pleaders have read the allegations in their petition and that the same are true and correct based either on their personal knowledge or authentic records, or based both on their personal knowledge and authentic records. While the rule gives the pleaders several ways of verifying their pleading, the use of the phrase personal knowledge or authentic records is not without any legal signification and the pleaders are not at liberty to choose any of these phrases fancifully. Hun Hyung Park v. Eung Won Choi[82] teaches us when to properly use authentic records in verifying a pleading:

> "[A]uthentic" records as a basis for verification bear significance in petitions wherein the greater portions of the allegations are based on the records of the proceedings in the court of origin and/or the court a quo, and not solely on the personal knowledge of the petitioner. To illustrate, petitioner himself could not have affirmed, based on his personal knowledge, the truthfulness of the statement in his petition before the CA that at the pre-trial conference respondent admitted having received the letter of demand, because he (petitioner) was not present during the conference. Hence, petitioner needed to rely on the records to confirm its veracity.

In her CA petition, Sorensen questioned the September 1, 2006 and September 18, 2006 Orders of Judge Gako which respectively granted Mahinay's Reiteratory Motion and denied her Motion for Reconsideration. In addition to said Orders and Motions, and to support the allegations in her petition, Sorensen also attached copies of the August 12, 2005 Decision of this Court in G.R. No. 153762 and other material portions of the records of Civil Case No. CEB-16335. Quite obviously, Sorensen had no participation in the preparation and execution of these documents although they constitute the main bulk of her evidence. Hence, it was necessary for Sorensen to state in the verification that the allegations in her petition are true and correct not only based on her personal knowledge but also based on the information she gathered from authentic records.[83] The CA is, therefore, correct in its observation that Sorensen's verification is insufficient.

Nonetheless, the Rules[84] and jurisprudence on the matter have it that the court may allow such deficiency to be remedied. In Altres v. Empleo,[85] this Court pronounced for the guidance of the bench and the bar that "non-compliance x x x or a defect [in the verification] does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the needs of justice may be served thereby."

Pitted against this test, we sustain the CA for not taking a liberal stance in resolving Sorensen's petition for certiorari as the dismissal thereof did not impair or affect her substantive rights.

No circumstances were present in Sorensen's petition which would warrant the liberal application of the rules to serve the needs of justice.

In claiming that the CA erred in dismissing her petition, Sorensen alleges that the appellate court glossed over the merits of her certiorari petition. She maintains that as an innocent mortgagee for value, she has the superior right to remain in custody of the owner's copy of TCT No. 117531. She insists that she merely relied on the four corners of said TCT which at the time of the transaction did not contain any annotation of lis pendens.

We are not impressed. True, when a mortgagee relies upon what appears on the face of a Torrens title and lends money in all good faith on the basis of the title in the name of the mortgagor, only thereafter to learn that the latter's title was defective, being thus an innocent mortgagee for value, his or her right or lien upon the land mortgaged must be respected and protected.[86] The rationale for this ruling is, if the rule were otherwise public confidence in the certificate of title would be impaired as everyone dealing with property registered under the Torrens system would have to inquire on the regularity of its issuance.

Such is not the case in the present controversy however. As borne out by the records, Mahinay's Notice of Lis Pendens was duly annotated on the original copy of TCT No. 117531 as early as August 17, 1994. On the other hand, the Real Estate Mortgage upon which Sorensen based her alleged superior right was executed only on October 27, 1994 and inscribed at the back of said title only on the following day, October 28, 1994. The prior registration of Mahinay's Notice of Lis Pendens bound the whole world,[87] including Sorensen. It charged her with notice that the land being offered to her as security for the loan is under litigation and that whatever rights she may acquire by virtue of the Real Estate Mortgage are subject to the outcome of the case.[88] More importantly, it also gave Mahinay a preferential right over subsequent liens and encumbrances annotated on the title.[89] "It is settled that in this jurisdiction the maxim prior est in tempore, potior est in jure (he who is first in time is preferred in right) is followed in land registration.[90] Having registered his instrument ahead of Sorensen's Real Estate Mortgage, Mahinay's Notice of Lis Pendens takes precedence over the said Real Estate Mortgage.

The claim of Sorensen that the owner's copy of TCT No. 117531 does not contain any adverse annotation at the time the owners transacted with her is of no moment. Being in the nature of involuntary registration, the annotation of the Notice of Lis Pendens on the original copy of TCT No. 117531 on file with the Registry of Deeds is sufficient to bind third parties. It affects the whole world even if the owner's copy does not contain the same annotation. The reason for this ruling was explained in Yu v. Court of Appeals:[91]

> The annotation of a notice of lis pendens at the back of the original copy of the certificate of title on file with the Register of Deeds is sufficient to constitute constructive notice to purchasers or other persons subsequently dealing with the same property. It is not required that said annotation be also inscribed upon the owner's copy because such copy is usually unavailable to the registrant; it is normally in the hands of the adverse party, or as in this case, in the hands of a stranger to the suit.
>
> x x x x
>
> Third persons like the respondent-spouses should not be satisfied with merely examining the owner's copy of the certificate of title. They should examine the original on file with the Register of Deeds for they are all constructively notified of pending litigations involving real property through notices of lis pendens annotated therein.

WHEREFORE, the petition in G.R. No. 165338 is hereby DISMISSED for being moot. Let the administrative charge of failure to resolve motion within the prescribed period against Judge Ireneo Lee Gako, Jr. be referred to

the Office of the Court Administrator for appropriate action.

The petition in G.R. No. 179375 is likewise DENIED and the Resolutions of the Court of Appeals dated April 24, 2007 and August 3, 2007 in CA-G.R. CEB-SP No. 02193 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

---

[1] Rollo (G.R. No. 165338), pp. 5-28.

[2] There are two sets of original records of Civil Case No. CEB-16335 sent to this Court relative to these petitions – one was forwarded to this Court on September 23, 2011 and the other on December 15, 2006 pursuant to this Court's October 2, 2006 Resolution (Rollo [G.R. No. 165338], p. 215). For reference purposes, we shall designate the one received by this Court on December 15, 2006 as "Records (G.R. No. 165338)" and the other simply as "Records."

Records, Vol. I, pp. 504-505; penned by Judge Ireneo Lee Gako, Jr.

[3] Id. at 186-187, 1021-1022.

[4] Id. at 552.

[5] Id. at 514-519.

[6] CA rollo, p. 70; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Arsenio J. Magpale and Francisco P. Acosta.

[7] Id. at 12-20.

[8] Records (G.R. No. 165338), p. 164.

[9] CA rollo, pp. 162-163; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[10] Id. at 72-73.

[11] Records (G.R. No. 165338), pp 1-4; Records, Vol. I, pp. 4-7.

[12] Docketed as Civil Case No. CEB-11086.

[13] Records (G.R. No. 165338), pp. 5-6; Records, Vol. I, pp. 8-9; penned by Judge Pampio A. Abarintos.

[14] Id. at 7-8; id. at 10-11.

[15] Id. at 10-11; id. at 14-15.

[16] Id. at 12; id. at 16.

[17] Id. at 37.

[18] Id. at 38.

[19] See Reply and Answer to Counterclaim, id. at 20-23; records, pp. 26-29.

[20] Id. at 86-94; id. at 86-94; penned by Judge Celso M. Gimenez.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[21] Id. at 93-94.

[22] See Motion for Reconsideration dated July 2, 1996, id. at 95-103.

[23] See Order dated November 22, 1996, id. at 111; penned by Acting Presiding Judge Jesus S. Dela Peña.

[24] See Notice of Appeal dated November 29, 1996, id. at 112.

[25] Id. at 115-124; penned by then Associate Justice Ruben T. Reyes (later to become Presiding Justice of the Court of Appeals and a member of this Court) and concurred in by Associate Justices Elvi John S. Asuncion and Rebecca De Guia-Salvador.

[26] See Entry of Judgment, id. at 125.

[27] Rollo (G.R. No. 165338), p. 54.

[28] Id. at 52-53.

[29] See Certification dated February 4, 2002, id. at 51.

[30] Records, Vol. I, pp. 290-292.

[31] Id. at 303-304.

[32] Id. at 304.

[33] See Delivery Receipt dated November 11, 2002, Rollo (G.R. No. 165338), pp. 59-60.

[34] Id. at 61-62; Records, Vol. I, pp. 414-415.

[35] Id. at 63-64; id. at 441-442.

[36] Id. at 65-66; id. at 474-475.

[37] Supra note 2.

[38] Supra note 5.

[39] Rollo (G.R. No. 165338), pp. 80-81; Records, Vol. I, pp. 528-529.

[40] See Opposition to Plaintiff’s Motion for Reconsideration, id. at 82-86; id. at 530-534.

[41] See Reply (to the Opposition to Plaintiff’s Motion for Reconsideration), id. at 87-88; id. at 543-544.

[42] Id. at 89; id. at 547.

[43] Id. at 90; id. at 548.

[44] Supra note 4.

[45] Rollo (G.R. No. 165338), pp 16-17.

[46] Records (G.R. No. 165338), pp. 126-131.

[47] A complaint for declaration of nullity of mortgage and for damages docketed as Civil Case No. CEB-23653 and raffled to Regional Trial Court, Branch 58, Cebu City.

[48] Entitled Susan Honoridez, Josefina H. Lopez and Constantina H. Sanchez v. Makilito B. Mahinay, Jocelyn “Joy” B. Sorensen and husband name unknown, Arthur Cabigon and Felimon Suarez, and decided on August 12,

2005, 466 SCRA 646.

[49] See Order of even date, supra note 8.

[50] Records (G.R. No. 165338), pp. 171-173.

[51] Id. at 177-178.

[52] Id. at 181.

[53] CA rollo, pp. 12-20.

[54] Id. at 14-16.

[55] Supra note 6.

[56] CA rollo, pp. 72-73.

[57] Id. at 74-83.

[58] Supra note 9.

[59] Rollo (G.R. 179375), p. 103.

[60] Id. at 459.

[61] Supra note 20.

[62] Section 107. Surrender of withheld duplicate certificates. – Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[63] Otherwise known as the PROPERTY REGISTRATION DECREE.

[64] Rollo (G.R. No. 165338), pp. 161-164.

[65] Supra note 2.

[66] Supra note 8.

[67] 337 Phil. 654, 658 (1997).

[68] See Motion for Issuance of Writ of Execution Pursuant to Section 10(e) Rule 39, records, Vol. II, pp. 1049-1050.

[69] Id. at 1102; penned by Judge Douglas A.C. Marigomen.

[70] See Sheriff's Return dated July 3, 2008, id. at 1116.

[71] See Motion To Declare the Owner's Duplicate Copy of TCT No. 117531 As Null And Void (With Prayer To

Direct the Register of Deeds of Cebu City To Issue A New Owner's Copy and To Transfer The Title of Lot No. 5, Block 68 to the Name of Plaintiff on the Basis Thereof, id. at 1120-1125.

[72] Id. at 1157-1159.

[73] Id. at 1158-1159.

[74] Supra note 43.

[75] Records (G.R. No. 165338), p. 130.

[76] 341 Phil. 299, 313-314 (1997). Citations omitted.

[77] Judge De Guzman v. Judge Dy, 453 Phil. 214, 220 (2003).

[78] Bautista v. Abdulwahid, 522 Phil. 390, 396 (2006).

[79] Montoya v. Varilla, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843; Garcia v. Molina, G.R. Nos. 157383 and 174137, August 10, 2010, 627 SCRA 540, 554.

[80] See Sorensen's Memorandum, rollo (G.R. No. 179375), pp. 483-490 (487-488).

[81] Valmonte v. Alcala, G.R. No. 168667, July 23, 2008, 559 SCRA 536, 543-544.

[82] G.R. No. 165496, February 12, 2007, 515 SCRA 502, 508.

[83] For a detailed discussion on the matter, see also Marohomsalic v. Cole, G.R. No. 169918, February 27, 2008, 547 SCRA 98.

[84] RULES OF COURT, Rule 7, Section 3, Third paragraph.

[85] G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596.

[86] Penullar v. Philippine National Bank, 205 Phil. 127, 135-136 (1983), citing Director of Lands v. Abache, 73 Phil. 606 (1942) and Blanco v. Esquierdo, 110 Phil. 494 (1960).

[87] Felix Gochan & Sons Realty Corp. v. Cañada, 247-A Phil. 299, 308 (1988), citing Noblejas, Land Titles and Deeds, 1958 Ed., p. 192.

[88] People v. Regional Trial Court of Manila, 258-A Phil. 68, 77 (1989).

[89] Cruz v. Bancom Finance Corporation, 429 Phil. 225, 242 (2002).

[90] Garcia v. Court of Appeals, 184 Phil. 358, 365 (1980) citing Bass v. De la Rama, 73 Phil. 682, 685 (1942).

[91] 321 Phil. 897, 901-903 (1995).

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.