CHARLES BERNARD H. REYES DOING BUSINESS UNDER THE NAME AND STYLE CBH REYES ARCHITECTS, PETITIONER, VS. ANTONIO YULO BALDE II, PAULINO M. NOTO AND ERNESTO J. BATTAD, SR., IN THEI...

G.R. NO. 168384. August 18, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before the Court is a "Motion to Inhibit the Honorable Chief Justice and Motion to Refer Case to the Court En Banc," dated August 4, 2006, filed by Atty. Francisco I. Chavez.

I.

According to the movant, the Motion to Inhibit the Chief Justice "is not an accusation of wrongdoing on the part of the Honorable Chief Justice. Rather it is impelled by Atty. Chavez's perception that in this case, the Honorable Chief Justice has not acted in an objective, impartial and neutral manner in disposing of incidental issues and motions presented by the parties."

The movant adds that "the dizzying pace by which private respondents" motions have been received and favorably acted upon in record time supports Atty. Chavez's perception that private respondents' motions – without as much as requiring petitioner to respond thereto – have been granted special attention and favor by the Honorable Chief Justice." (bold types in original)

Atty. Chavez's perception about the alleged "closeness and the good relationship between Atty. Ordoñez and the Chief Justice" to impair the latter's objectivity and impartiality has no basis, for the following reasons:

(1) The actions taken on the various motions and incidents enumerated by the movant were made by the entire membership of the First Division. Not being the ponente, the Chief Justice did not initiate or propose any of the actions and rulings made by the Court Like the three other Division members, he merely concurred with the actions/rulings proposed by the ponente. While some orders and actions, especially temporary restraining orders, are issued in the name of the Division chairman (who in this case is the Chief Justice), they are really collective actions of the entire Division, not merely those of the Chair. This is the normal procedure in all Divisions, not just in the First.

(2) The alleged "unpleasant interaction these past 19 years between Atty. Chavez and Atty. Sedfrey Ordoñez with whom Chief Justice worked either as associate or partner sometime ago" has nothing to do at all with the concurrences made by the Chief Justice on this case. These concurrences were given on the basis only of legal merit, and on nothing else.

(3) True, the Chief Justice was an associate (not a partner) in 1961 to 1963 in the Salonga, Ordoñez and Associates, which incidentally had been dissolved in 1987. True also, he has had a close personal and professional

relationship with the principal partner in that law firm, Sen. Jovito R. Salonga. That is the reason the Chief Justice has inhibited himself from cases in which Sen. Salonga was/is a party or a counsel.[1]

However, he had no similar closeness with Atty. Ordoñez. That is why he has not inhibited himself from cases involving Atty. Ordoñez. In fact, he has not hesitated, on several occasions, to vote against parties/causes represented by the former Secretary of Justice.

(4) In fairness to all concerned, Atty. Ordoñez has never spoken, directly or indirectly, with the Chief Justice on any matter pending in the Supreme Court and in any other court. He has never attempted, directly or indirectly, personally or through others, to influence the Chief Justice in any manner whatsoever. In fact, the Chief Justice understands that Atty. Ordoñez has been seriously ill, going in and out of the hospital, over the past several months. And yet the Chief Justice has not even visited or spoken with him during such period.

(5) On the other hand, the Chief Justice, when so warranted by the facts and law, has voted in favor of causes and parties represented by Atty. Chavez. One outstanding example is Chavez v. PCGG (360 Phil. 133, December 9, 1998; 366 Phil. 863, May 19, 1999), which was written by then Associate Justice Artemio V. Panganiban. Atty. Chavez knows that he has won the vote of the Chief Justice without his having to speak with or influence him in any manner.

(6) Movant's perception "that Atty. Ordoñez's concern for and interest in upholding the CIAC jurisdiction must have somehow been relayed to the Honorable Chief Justice" is completely baseless. As already stated, there had been no conversation or communication, directly or indirectly, personally or through others, between the Chief Justice and Atty. Ordoñez (or anyone representing him) about any matter related to any case in this, or any other, court. Neither is the Chief Justice aware of any alleged personal interest of Atty. Ordoñez to uphold the CIAC.

(7) In a few months, the incumbent Chief Justice is scheduled to retire from the judiciary. It is totally inconceivable that he will smear his eleven year record of integrity, independence and ethical conduct in the Supreme Court with any action that is less than "objective, impartial and neutral." On the other hand, he assures movant (and all concerned) that he will continue with his vow "to lead a judiciary characterized by four Ins: independence, integrity, industry and intelligence."

II.

Following his misperception of "closeness and bonding between Atty. Ordoñez and the Chief Justice," the movant assailed certain "proceedings in this Honorable Court's First Division." However, these proceedings can easily be explained, thus:

(1) Respondents' Motion to Include Hon. Pedro Sabundayo, Jr., Presiding Judge, Regional Trial Court of Muntinlupa City, Branch 203, as public respondent was denied because Section 4, Rule 45 of the Rules of Court provides that in a petition for review on certiorari to the Supreme Court, there is no need to implead the lower courts or judges thereof either as petitioners or respondents. There is no irregularity when the Resolution denying respondents' motion was issued when the Chief Justice was on official leave. The remaining Members of the Division can proceed with official business despite the absence of the Chief Justice as long as the required majority is present. This is in accordance with Section 4(3), Article VIII of the Constitution which provides that "cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members."

(2) The issuance of a TRO enjoining the Presiding Judge of Muntinlupa City, Branch 203 from continuing with any of the proceedings in Civil Case No. 03-110 and from enforcing the Order of the trial court dated June 29,

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2006 ordering the sheriff to implement the writ of execution dated May 17, 2006, is in order. Respondents satisfactorily established that they are entitled to the injunction.

It appears from the records that petitioner filed a complaint against respondents with the Regional Trial Court of Muntinlupa City which was docketed as Civil Case No. 03-110 praying that an accounting be rendered to determine the cost of the materials purchased by respondent Papas; that respondents be ordered to pay the cost of the additional works done on the property; that the Design-Build Construction Agreement be ordered rescinded because respondents breach the same; and that respondents be ordered to pay moral and exemplary damages. Based on the same Design-Build Construction Agreement, respondents filed with the Construction Industry Arbitration Commission (CIAC) a complaint praying that petitioner be ordered to finish the project or, in the alternative, to pay the cost to finish the same; to reimburse the overpayments made by respondents; and to pay liquidated damages, attorney's fees and costs of the suit.

On June 8, 2005,[2] the CIAC rendered a decision on the merits of the case awarding in favor of respondents the sum of P4,419,094.98. The case is presently on appeal with the Court of Appeals[3] docketed as CA-G.R. SP No. 90136.[4]

Meanwhile, on July 29, 2005, the trial court rendered judgment in Civil Case No. 03-110 in favor of petitioner ordering the respondents to pay P840,300.00 representing the cost of the additional works; P296,658.95 representing the balance of the contract price; P500,000.00 by way of moral damages; P500,000.00 as exemplary damages; P500,000.00 as attorney's fees and costs of the suit. In an Order dated May 17, 2006, Judge Sabundayo, Jr. directed Sheriff Melvin T. Bagabaldo to implement the writ of execution by causing the respondents to "render an accounting of all the construction materials they bought for the construction of the project x x x; to levy the goods and chattels of the [respondents] x x x and to make the sale thereof x x x."[5]

In their Second Manifestation with Prayer for Issuance of a Temporary Restraining Order/Injunction[6] filed with this Court on July 10, 2006, respondents averred that from July 7, 2006 until 4 o'clock in the morning of July 8, 2006, Sheriff Bagabaldo went to the residence of respondent Papas and levied several of her personal properties.[7] Respondents bewailed that despite the pronouncement of the Court of Appeals that the CIAC, not the Regional Trial Court, which has jurisdiction over the case, and despite the pendency of the instant case before us, the Regional Trial Court still proceeded with the implementation of the writ.

It is important to mention that in both cases, the parties insist that the other breached their obligation under the Design-Build Construction Agreement. Petitioner however argues that the Regional Trial Court properly took cognizance of the case while respondents claim that CIAC has the exclusive and original jurisdiction on the subject matter. Otherwise stated, if we rule in the instant case that CIAC has jurisdiction over the controversy, then it would necessarily follow that the Regional Trial Court does not have jurisdiction. Since it did not acquire jurisdiction over the controversy, then the writ of execution that it issued was void. If we allow the RTC Judge and the Sheriff to continue with the proceedings in Civil Case No. 03-110, then, whatever judgment that would be rendered in the instant case would be rendered nugatory. In view of the above circumstances, respondents clearly established that they are entitled to the issuance of a TRO.

Thus on July 12, 2006, the Court issued a Resolution that reads:

> Acting on the prayer for issuance of a temporary restraining order/injunction, the Court further resolves to issue a TEMPORARY RESTRAINING ORDER enjoining the Presiding Judge, Regional Trial Court, Branch 203, Muntinlupa City, from continuing with any of the proceedings in Civil Case No. 03-110 entitled "Charles Bernard H. Reyes, doing business under the name and style of "CBH Reyes Architects' vs. Spouses Mely and Cesar Esquig, et al." [subject matter of the assailed Court of Appeals decision and resolution dated February

> 18, 2005 and May 20, 2005, respectively, in CA-G.R. SP No. 83816 entitled "Charles Bernard H. Reyes, doing business under the name and style CBH REYES ARCHITECTS vs. Antonio Yulo Balde II, et al"] and from enforcing the Order dated June 29, 2006 ordering the designated sheriff to implement the writ of execution dated May 17, 2006 to enforce the decision dated July 29, 2005 in Civil Case No. 03-110, upon the private respondents' filing of a bond in the amount of Three Hundred Thousand Pesos (P300,000.00) within a period of five (5) days from notice hereof x x x.

(3) Thereafter, respondents filed an Urgent Motion for Clarification of the above resolution. Accordingly, on July 19, 2006, we issued a resolution which is a clarification of the TRO issued on July 12, 2006. Both the July 12, 2006 and July 19, 2006 Resolutions are covered by the same bond in the amount of P300,000.00.

(4) A petition review under Rule 45 of the Rules of Court is not a matter of right but of sound judicial discretion.[8] For purposes of determining whether the petition should be dismissed or denied, or where the petition is given due course, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.[9] This Court exercised its discretion when it did not require petitioner to file comment on respondents' Manifestation with Urgent Motion to Resolve with Prayer for Injunction, Second Manifestation with Prayer for Issuance of a Temporary Restraining Order/Injunction, Urgent Motion for Clarification, and Compliance.

(5) The Court did not exceed its jurisdiction; neither did it encroach on the jurisdiction of the Court of Appeals or of the lower court when it issued the Resolution dated July 12, 2006. As discussed, there is compelling reason to issue a TRO as the respondents satisfactorily established they are entitled to the relief demanded. It may further be said that the issuance of a TRO on July 12, 2006 is not a final determination of the matter. It was a remedy intended to avoid any irreparable injury that might be caused to the parties. It may be recalled that the CIAC and the trial court each asserted its jurisdiction over the controversy to the exclusion of the other.

(6) There is no truth or basis to the allegation that the case has been given "special attention." All actions on the motions and incidents have been performed regularly.

WHEREFORE, the Motion to Inhibit the Honorable Chief Justice is DENIED. The Motion to Refer Case to the Court En Banc is GRANTED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Autris-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] With the exception of Francisco v. House of Representatives (G.R. No. 160261, 415 SCRA 44, November 10, 2003), in which the Court in a Resolution dated October 28, 2003, overruled his inhibition and "directed [then Associate Justice Panganiban] to participate." It is a matter of record that then Associate Justice Panganiban's Separate Opinion in that case did not agree with the position taken by Amicus Curiae Salonga.

[2] Rollo, p. 1.

[3] Id. at 466.

[4] Id. at 573.

[5] Id. at 558-559.

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[6] Id. at 569-579.

[7] Personal properties consisted of airconditioning units, garden sets, sofas, beds, DVD players, benches, cabinets, tables, chairs, etc.; rollo, pp. 583-584.

[8] RULES OF COURT, Rule 45, Sec. 6.

[9] RULES OF COURT, Rule 45, Sec. 7.

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