

PERLA S. ESGUERRA, PETITIONER, VS. JUDGE FATIMA GONZALES-ASDALA, J. WALTER THOMPSON COMPANY (PHILS.), INC., AND AGL MARKET RESEARCH INCORPORATED, RESPONDENTS.

G.R. No. 168906. December 04, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed in this Petition for Review under Rule 45 of the Rules of Court are the Decision[1] dated 31 March 2005 of the Court of Appeals in CA-G.R. SP No. 79075 which denied the Petition for Prohibition and Certiorari/Mandamus with application for Temporary Restraining Order and Writ of Preliminary Injunction of petitioner Perla S. Esguerra (Esguerra); and the Resolution[2] dated 12 July 2005 of the appellate court in the same case denying petitioner's Motion for Reconsideration.

Esguerra is a licensed nutritionist-dietitian presently employed as the Chief Dietitian of the Philippine Heart Center (PHC), located at East Avenue, Diliman, Quezon City. Respondents J. Walter Thompson Company[3] (JWT) and AGL Market Research, Inc. (AGL) are corporations duly organized and existing under Philippine laws. On 15 May 2000, AB Food and Beverages[4] Philippines (AB Food) entered into a contract with JWT whereby the latter would handle the advertising, marketing, promotional and general publicity requirements of the former.

Esguerra filed an Amended Complaint[5] for Damages with Prayer for Preliminary Injunction and Temporary Restraining Order against JWT and AGL, which was docketed as Civil Case No. Q-03-50205 and raffled to Branch 87 of the Quezon City Regional Trial Court (RTC), presided by respondent Judge Fatima Gonzales-Asdala (Judge Asdala).

In her Amended Complaint, Esguerra alleged that on 14 May 2003, AGL, thru its Director/General Manager Nicanor G. Aguirre (Aguirre), wrote a letter to the PHC, inviting nutritionists from the said hospital to participate in a study it was conducting. Aguirre gave the assurance that "all information that would be generated from this study would be kept completely confidential," and the AGL representative bearing the letter made it understood that, among other things, a talent fee of P20,000.00 would be paid to the nutritionist who would be chosen to appear in a commercial that would subsequently be shot.

Esguerra narrated that she showed up at the Cravings Restaurant in San Juan at the appointed time on 16 May 2003 to participate in the AGL "study." The first stage thereof consisted in being "interviewed" by a lady about two unnamed products with disclosed ingredients and nutrients; the second product had evidently higher nutrients. Esguerra was requested to compare the two products and asked whether she would endorse use of the higher-nutrient product. In the second stage of the supposed study, Esguerra was taken inside a room where she was asked additional questions by another lady, while a man, apparently representing JWT, focused a video-camera on her. She was then asked to uncover and find out for herself the product she preferred to endorse. Her candid reaction to the "discovery" was that it was Ovaltine. The incident was taped on the video-camera. As

Esguerra emerged from the room, a third lady approached her asking her to sign a piece of paper and telling her that it had to do with the taping that just took place. Since she was in a hurry to keep another appointment in Quezon City, Esguerra signed the document, which appeared to be a contract of agreement, but expressly writing at the side thereof that in case she would be chosen to appear in the commercial, which she thought would still be shot at some future time, clearance from the Director of the PHC must first be obtained before such commercial may be shown to the public. Esguerra also verbally informed the third lady of this condition.

On 16 June 2003, at about noontime, an Ovaltine commercial was aired on television with Esguerra appearing therein. The said commercial showed a portion of Esguerra's interview videotaped on 16 May 2003. According to Esguerra, there was absolutely no advice from either JWT or AGL prior to the airing of the commercial that she had been chosen to so appear therein. Neither did JWT and AGL secure the required clearance from the PHC Director nor did they pay Esguerra any talent fee for the commercial.

That same afternoon of 16 June 2003, after being informed of the unexpected airing of the Ovaltine commercial, and fearful of any adverse consequences, disciplinary sanction, or misunderstanding which may result therefrom, Esguerra allegedly took the following actions: (a) she immediately called up JWT Account Director Joef Peña to protest against the showing of the commercial; (b) she wrote a letter dated 17 June 2003 to JWT, copy furnished AGL, to formally protest the airing of the commercial and to demand the immediate pull-out of the same; and (c) she furnished the PHC Director and her Association with copies of her 17 June 2003 letter to inform and explain to them that what happened anent the Ovaltine commercial was not of her volition.

Esguerra averred that JWT responded by transmitting to her, on 24 June 2003, a communication officially informing her for the first time of her selection as one of those who would appear in the Ovaltine commercial, for which she would receive remuneration in the amount of P5,000.00. Not satisfied therewith, Esguerra, through her counsel, wrote JWT on 4 July 2003 a second missive seeking, among other demands, the immediate cessation of the airing of the Ovaltine commercial and payment of the agreed upon talent fee of P20,000.00. Despite her letter-protest, received by JWT and AGL, the Ovaltine commercial showing Esguerra continued to be broadcasted on a daily basis up to the time she instituted Civil Case No. Q-03-50205.

Esguerra thus prayed of the RTC-Branch 87 the following:

WHEREFORE, premises considered, [herein petitioner Esguerra] most respectfully prays of this Honorable Court that:

1)

Pending hearing on the application for preliminary injunction, a Temporary Restraining Order be immediately issued enjoining [herein respondents JWT and AGL] from airing the subject Ovaltine commercial featuring the appearance therein of [Esguerra]; and after such hearing, for a preliminary prohibitory injunction to issue against such airing;

2)

Following trial on the merits, judgment be rendered in favor of [Esguerra] and against [JWT and AGL], making said injunction already permanent, and further ordering [JWT and AGL] as follows:

a)

To pay the amount of P20,000.00 as [Esguerra's] talent fee plus interest at the legal rate thereon until fully paid;

b)

To pay the sum of P200,000.00 as and by way of moral damages;

c)

To pay the sum of P300,000.00 as and by way of exemplary damages;

d)

To pay an amount equivalent to 25% of the amount due, as and by way of attorney's fees;

e)

To pay the costs of suit.[6]

Esguerra claimed to have made several inquiries on the status of her application for preliminary injunction and/or Temporary Restraining Order (TRO) with the RTC Branch Clerk of Court. She was assured that her application would be set for hearing. After almost three weeks of waiting without her application for injunctive relief being set for hearing, Esguerra filed on 26 August 2003 an Urgent Motion for Inhibition of RTC Judge Asdala, asserting therein that "by failing to act swiftly on her application for TRO as mandated under the law, [RTC Judge Asdala] has already displayed partiality and bias against her and in favor of the [herein respondents JWT and AGL], whether or not for 'valuable' consideration."

RTC-Branch 87, however, subsequently issued an Order dated 28 August 2003 in which it ruled on Esguerra's application for preliminary injunction and/or TRO, thus:

From the given facts (par. 2, 3, 4, 5, 6, 7 and 8) in the complaint, this Court finds that not only did [herein petitioner Esguerra] clearly fail to point the specific acts committed by each of the [herein respondents JWT and AGL] in alleged violation of her right or which has caused her or will cause her injustice, [Esguerra] likewise failed to show in her application the material and substantial right she claims to have been invaded by [JWT and AGL] to warrant the issuance of preliminary injunction.

Since facts have not been sufficiently shown by [Esguerra] in her application to bring her case within the conditions required by Sec. 3, Rule 58,[7] this Court has to refuse injunction, more considering the fact that the action for damages which [Esguerra] has already instituted against [JWT and AGL] would adequately compensate the injuries caused her.

From an overall judicious examination of [Eguerra's] allegation in support of her application for injunction, this Court finds that issuance of an injunctive relief based on the facts obtaining is not warranted.

WHEREFORE, [Esguerra's] application for injunction is DENIED for lack of merit.[8]

This led Esguerra to file another Urgent Motion[9] which sought, among other reliefs, reconsideration of the Order dated 28 August 2003 of RTC-Branch 87 and resolution of her Motion for Inhibition. She averred in her Urgent Motion that the denial of her application for injunctive relief was highly irregular, having been issued without a summary hearing, in violation of the provisions of Section 4(d), Rule 58 of the 1997 Rules of Civil Procedure.

However, without waiting for the resolution of her Urgent Motion by RTC-Branch 87, Esguerra filed a Petition[10] before the Court of Appeals, docketed as CA-G.R. SP No. 79075, in which she sought the issuance of: (a) an Order to expedite the proceedings in Civil Case No. Q-03-50205; (b) a Writ of Prohibition permanently enjoining Judge Asdala of RTC-Branch 87 from conducting further proceedings in Civil Case No. Q-03-50205 and an Order to re-raffle the said case to another judge; and (c) a Writ of Certiorari to annul and set aside the denial of Esguerra's application for injunction/TRO. In the alternative, Esguerra prayed for the issuance of: (a) a

Writ of Mandamus ordering Judge Asdala to conduct summary hearing on Esguerra's application for injunction/TRO; (b) an Order directing Judge Asdala to pay damages sustained by Esguerra; and (c) an Order enjoining Judge Asdala from conducting further proceedings in Civil Case No. Q-03-50205.

On 3 September 2003, Judge Asdala issued an Order explaining why no hearing was conducted on the prayer for TRO filed by Esguerra. The Order of Judge Asdala reads:

Sec. 4, Rule 58 of the Revised Rules of Civil Procedure provides that, a preliminary injunction or temporary restraining order may be granted only when: (a) the application in the action or proceedings is verified, and (b) the application shows facts entitling the applicant to the relief demanded. The Rules further states that the application for a temporary restraining order shall only be acted upon in a summary proceeding which shall be conducted within 24 hours after the sheriff's return of service and/or the records are received by the branch selected by raffle. From this particular provision, it is clear that the conduct of a summary hearing within 24 hours after the sheriff's return of service is subject to the condition that the summons, as well as, the complaint and the verified application for temporary restraining order have been properly served upon the adverse parties, which requirement however, has not been satisfied in the instant case.

A perusal of the record shows that there is no verified application for temporary restraining order on record, neither is it shown that the applicant has provided the adverse parties with any verified affidavit in support of her application. What is shown is service of the summons and the amended complaint to only one defendant, J. Walter Thompson Company (Phils.), but not to defendant AGL Market. Indeed, there are more reasons than one, as to why this Court did not conduct a summary hearing within the 24 hours period after the sheriff's return of service of summons to defendant J. Walter Thompson and those reasons are, as just stated.

Plaintiff's complaint at the inception was already defective but despite sufficient time allowed for her to correct that, plaintiff did not, complacent, that the Court will overlook them in her favor. With such defects and the filing of the amended complaint, on August 7, 2003, eight (8) days after the Sheriff's return showing that service of summons and the complaint without a verified affidavit or verified application for temporary restraining order, the Court is not obliged to conduct a summary hearing, because the essential "time element" is deemed to have been waived by the plaintiff herself when she filed the amended complaint only on August 7, 2003; the non-service of the complaint and affidavit/application for temporary restraining order to the defendants.[11]

In the meantime, during the pendency of CA-G.R. SP No. 79075 before the Court of Appeals, Judge Asdala issued an Order[12] dated 18 September 2003, inhibiting herself from Civil Case No. Q-03-50205. Civil Case No. Q-03-50205 was then re-raffled on 2 October 2003[13] to the Quezon City RTC-Branch 215, presided over by Judge Maria Luisa Quijano-Padilla (Judge Padilla).

At the hearing held on 10 October 2003, Esguerra informed the trial court (Branch 215) that the Ovaltine advertisement had ceased to be aired on television and that she was therefore desisting from asking for the temporary restraining order and/or injunction without prejudice to again avail herself of the said reliefs should the showing thereof resume.[14]

Acting on Esguerra's motion, RTC-Branch 215 issued an Order dated 27 October 2003, in which it decreed:

WHEREFORE, premises considered, this Court declares as follows:

- a) The application for TRO is rendered moot and academic by the manifestation of [herein petitioner Esguerra] that she is withdrawing the same with a reservation to revive should it be deemed necessary;
- b) The Motion for Reconsideration of the denial of the application for preliminary injunction is likewise rendered moot and academic pursuant to the above-cited reason;

- c) The Motion to Admit Answer filed by [herein respondent] J. Walter Thompson is granted;
- d) The Urgent Motion (to declare [herein respondent] J. Walter Thompson in default) is rendered moot and academic with the admission of the Answer of said [respondent].[15]

Again, claiming that the airing of the commercial resumed, Esguerra filed another Urgent Motion[16] once more urging the RTC-Branch 215 to issue a preliminary injunction/TRO as she originally prayed for in her Amended Complaint in Civil Case No. Q-03-50205.

On 14 November 2003, RTC-Branch 215 issued an Order granting the TRO Esguerra prayed for, to wit:

Accordingly, let a temporary restraining order issue against the [herein respondents] J. Walter Thompson Company (Phils.) Inc., AGL Market Research Incorporated, and AB Food and Beverage Philippines, directing them to cease and desist from airing on different television networks the commercial of Ovaltine where [herein petitioner Esguerra] appears as an endorser of said product for a period of twenty (20) days from receipt of this Order.

The hearing of the application for preliminary injunction set on November 19, 2003 is maintained.[17]

After conducting a hearing on the application for preliminary injunction prayed for by Esguerra, RTC-Branch 215 issued on 8 June 2004 another Order likewise granting Esguerra's application for preliminary injunction:

WHEREFORE, let a writ of preliminary injunction be issued restraining and enjoining [respondents] from airing the subject commercial pending the resolution of the main case upon posting of a bond in the amount of Five Hundred Thousand (P500,000.00) Pesos pursuant to Sec. 5, Rule 58 of the 1997 Rules of Civil Procedure.

Let this case be set for pre-trial conference on July 14, 2004 at 8:30 a.m.[18]

Henceforth, RTC-Branch 215 carried on with the proceedings in Civil Case No. Q-03-50205.

Since Esguerra did not withdraw her Petition in CA-G.R. SP No. 79075, the Court of Appeals also proceeded with the same.

In its Decision dated 31 March 2005, the Court of Appeals dismissed Esguerra's Petition. It reasoned that Judge Asdala resolved Esguerra's application for injunction/TRO in Civil Case No. Q-03-50205 in the exercise of her judicial function. Esguerra assailed in her Petition an official act of Judge Asdala, for which the latter cannot be made answerable for damages.

The Court of Appeals also pointed out in its Decision that the writ of certiorari is an extraordinary remedy available only when there is no plain, speedy and adequate remedy in the ordinary course of law; and in this case, the writ of certiorari is a remedy not yet available to Esguerra at the time she filed her Petition for the same. It noted that Esguerra filed her Petition even before the resolution by the RTC-Branch 87 of her motion for reconsideration of its Order dated 28 August 2003. And even though Esguerra already withdrew her application for injunction/TRO, the denial of which by RTC-Branch 87 she was assailing in her Petition, she still wanted to pursue the Petition in apprehension that her reinstated application for injunctive relief would again be denied by RTC-Branch 215. This practice of taking shortcuts of the established rules of procedure would not be countenanced by the appellate court.[19]

Esguerra's Motion for Reconsideration[20] of the Decision dated 31 March 2005 of the Court of Appeals was denied by the same court in its Resolution dated 12 July 2005.[21]

Esguerra is presently before us via the Petition at bar, raising the following issues:

- 1) Whether or not the case had become totally moot and academic.

2) Whether or not the public respondent may be held liable for damages.

3) What is the amount of damages that should be awarded.[22]

Esguerra wants us not only to reverse and set aside the assailed Decision and Resolution of the Court of Appeals, but also to hold Judge Asdala answerable for damages in the amount of P2.2 million, plus costs of suit and attorney's fees.

In sum, Esguerra asserts that she suffered damages by reason of the continued showing of the offending commercial from the time the TRO should have been issued by Judge Asdala of RTC-Branch 87, to the time it was actually issued by Judge Padilla of RTC-Branch 215. By Esguerra's determination, Judge Asdala could and should have issued the TRO as early as 1 August 2003, since summons were already served on respondents on 29 July 2003 and Civil Case No. Q-03-50205 was raffled to the RTC-Branch 87 on 31 July 2003. Under Section 4(d) of Rule 58, Judge Asdala was obliged to already conduct a summary hearing on Esguerra's application by the very next day, 1 August 2003, but Judge Asdala dilly-dallied in acting on the application too long. From 1 August 2003 to 17 November 2003, the date when JWT and AGL received copies of the Order dated 14 November 2003 of RTC-Branch 215 granting a TRO in Esguerra's favor and, when the showing of the Ovaltine commercial was actually stopped, the said commercial was already shown 110 times more.[23] Worse, Judge Asdala also delayed ruling on Esguerra's Motion for Inhibition. Esguerra bases her claim for damages on the omission or failure of Judge Asdala to do what was clearly required of her by the law.

The Petition is not meritorious. The Court of Appeals did not err in dismissing Esguerra's Petition in CA-G.R. SP No. 79075.

Esguerra's Petition before the Court of Appeals is one for certiorari, prohibition, as well as mandamus, all special remedies under Rule 65 of the Rules of Court, relevant provisions of which read:

SEC. 1. Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

SEC. 2. Petition for Prohibition. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

SEC. 3. Petition for mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

It does well for Esguerra to remember that at the threshold of every special civil action under Rule 65, the person

seeking the writs must be able to show, on pain of dismissal of his petition, that his resort to such extraordinary remedy is justified by the "absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law." Esguerra utterly fails in this regard for there is nothing in her Petition in CA-G.R. SP No. 79075, not even an allegation therein, that she had no appeal or any other efficacious remedy against the 28 August 2003 Order of RTC-Branch 87 denying her application for preliminary injunction. The Court of Appeals, therefore, was compelled to dismiss Esguerra's Petition in CA-G.R. SP No. 79075.

As the Court of Appeals noted, at the time Esguerra filed her Petition in CA-G.R. SP No. 79075, her motion for reconsideration of the Order dated 28 August 2003 of RTC-Branch 87 denying her application for injunctive relief was still pending. This only shows that the remedy of a motion for reconsideration from the adverse 28 August 2003 Order of RTC-Branch 87 was still available to, and was in fact, availed of by Esguerra.

Esguerra would also later on withdraw her application for preliminary injunction/TRO. At this point, the question of whether RTC-Branch 87 properly denied the said application, became moot and academic.[24] There is no more justiciable controversy insofar as the denial of the petition for preliminary injunction/TRO is concerned, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief in this regard to which Esguerra would be entitled and which would be negated by the dismissal of her Petition in CA-G.R. SP No. 79075 by the appellate court.[25] Courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved. Courts will not determine a moot question.[26]

Esguerra still insists that her Petition in CA-G.R. SP No. 79075 cannot be moot and academic because the issue of Judge Asdala's liability for the damages Esguerra sustained survived Esguerra's withdrawal of her application for injunctive relief and Judge Asdala's inhibition from Civil Case No. Q-03-50206, and still needed to be resolved.

It is indubitable that Judge Asdala's Order dated 28 August 2003 denying Esguerra's application for a preliminary injunction/TRO was rendered in the exercise of her official function as the Presiding Judge of RTC-Branch 87 which had jurisdiction over Civil Case No. Q-03-50206 and all its incidents, including the said application. Judges cannot be subjected to liability — civil, criminal or administrative — for any of their official acts, no matter how erroneous, so long as they act in good faith. It is only when they act fraudulently or corruptly, or with gross ignorance, may they be held criminally or administratively responsible.[27] In *Ang v. Quilala*, [28] we further explained that it is settled doctrine that judges are not liable to respond in a civil action for damages, and are not otherwise administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. Certain it is that a judge may not be held administratively accountable for every erroneous order or decision he renders. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. More importantly, the error must be gross or patent, deliberate and malicious, or incurred with evident bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

Although *Ang v. Quilala* is an administrative case, our pronouncements therein are equally relevant to the instant case, a special civil action for certiorari, prohibition, and mandamus, in which petitioner Esguerra additionally seeks civil compensation from Judge Asdala. Not every error committed by a judge in the exercise of his official functions would make him liable for the damages which a party may sustain by reason thereof, unless it is shown that such error was so gross or patent, deliberate and malicious, or incurred with evident bad faith.

The records do not show that Judge Asdala was moved by bad faith, ill will or malicious intent when she did not

grant the TRO and preliminary injunction Esguerra prayed for. Bad faith must be proved by clear and convincing evidence.[29] It is not presumed and the party who alleges the same has the onus of proving it.[30] Esguerra has not, in fact, adduced any proof to show that impropriety attended the actions of Judge Asdala.

While we have earlier ruled that the question of the propriety of the denial of the application for preliminary injunction has become moot and academic, still let it be stated that Judge Asdala's ruling is not manifestly unjust nor did it constitute gross ignorance. Her reasons for denying Esguerra's application for injunctive relief were clearly stated in her Order of 28 August 2003. She had obviously applied therein the basic requirements, as laid down in jurisprudence, for entitlement to injunctive relief and found that Esguerra's application failed to comply with the requisites.

We also refer Esguerra to Section 5, Rule 65 of the Rules of Court, governing her Petition before the Court of Appeals, which provides:

SEC. 5. Respondents and costs in certain cases. - When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

It is clear from the foregoing that in petitions for certiorari, prohibition, and mandamus, the public respondent, such as Judge Asdala herein, should not actively participate in the proceedings as a general rule, unless directed otherwise by the court. The inclusion of the public respondent in such petitions is more of a formality, since it is still the private respondent/s who must contest the said petitions. It is likewise explicitly stated in the afore-quoted provision that the public respondent in petitions under Rule 65 shall not be liable for the costs which may be awarded to the petitioner/s. It can be rationally deduced therefrom that in such petitions, the public respondent is not meant to incur or shoulder personal liability for his official actions, even if the writs of certiorari, prohibition or mandamus are so issued against him.

Esguerra's subsequent reinstatement of her application for injunction/TRO before RTC-Branch 215 did not revive the grounds for her Petition in CA-G.R. SP No. 79075. She sought recourse with the Court of Appeals because RTC-Branch 87 denied her previous application for injunctive relief. In contrast, RTC-Branch 215, upon reinstatement by Esguerra of her application, actually granted her a TRO and also a preliminary injunction. Esguerra, however, cannot use her reinstated application for injunctive relief which was favorably acted upon by RTC-Branch 215, as the basis for her then pending Petition before the Court of Appeals in CA-G.R. SP No. 79075. This, certainly, will be repugnant to the fundamental due process which Judge Asdala must not be deprived of.

Finally, Esguerra is still litigating her civil case against JWT and AGL before RTC-Branch 215, Quezon City, in which she also prays for compensation for the damages she had suffered from the airing of the Ovaltine commercial. To insist on recovering damages from Judge Asdala for the same act, i.e., the showing of the

Ovaltine commercial, suspiciously appears to be an attempt to recover double compensation.

Wherefore, premises considered, the instant Petition is denied for lack of merit. The Decision of the Court of Appeals dated 31 March 2005 and its Resolution dated 12 July 2005 CA-G.R. SP No. 79075 are Affirmed. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Renato C. Dacudao and Edgardo F. Sundiam, concurring. Rollo, pp. 89-98.

[2] Rollo, p. 106.

[3] Present name is WPP Marketing Communications; rollo, p. 243.

[4] Manufacturer of Ovaltine food product; rollo, p. 243.

[5] AB Foods was not impleaded in the Amended Complaint but was referred to as one of defendants in Civil Case No.Q-03-50205 although the Records are silent as to when AB Foods was impleaded in the case. (CA rollo, p. 17.)

[6] CA rollo, p. 20.

[7] Sec. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[8] CA rollo, p. 29.

[9] Id. at 32.

[10] Id. at 2.

[11] Rollo, pp. 43-44.

[12] CA rollo, p. 46.

[13] Rollo, p. 224.

[14] Id. at 215.

[15] CA rollo, p. 60.

[16] Id. at 61.

[17] Rollo, p. 54.

[18]CA rollo, p. 117.

[19]Rollo, p. 97.

[20] Id. at 99.

[21]Id. at 106.

[22]Id. at 2.

[23]Id. at 114.

[24]Kho v. Court of Appeals, 429 Phil. 140, 151 (2002).

[25]Gancho-on v. Secretary of Labor and Employment, 337 Phil. 654, 657-658 (1997).

[26]Korea Exchange Bank v. Gonzales, G.R. No. 139460, 31 March 2006, 486 SCRA 166, 176.

[27] Contreras v. Judge Solis, 329 Phil. 376, 388 (1996), citing Valdez v. Valera, 171 Phil. 217, 221 (1978).

[28] 444 Phil. 742, 747-748 (2003).

[29] Gatmaitan v. Gonzales, G.R. No. 149226, 26 June 2006, 492 SCRA 591, 605.

[30]Sesbreño v. Igonia, A.M. No. P-04-1791, 27 January 2006, 480 SCRA 243, 256.

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