

**CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA),
PETITIONER, VS. JOSE S. DOMINGUEZ, ISIAS Q. VIDUA, VICENTE M.
BARRETO, JOSE M. SANTIAGO, JOSE NASERIV C. DOLOJAN, JUAN
FERNAND...**

G.R. No. 189949. March 25, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a verified petition for indirect contempt with application for preliminary injunction filed by Castillejos Consumers Association, Inc. (CASCONA) against several respondents for disobeying the March 13, 2009 Decision[1] of this Court in G.R. Nos. 176935-36, entitled ZAMECO II Board of Directors v. CASCONA, et al.[2]

The Facts

Petitioner CASCONA is an organization of electric consumers from Castillejos, Zambales, under the coverage area of Zambales II Electric Cooperative, Inc. (ZAMECO II). Acting on a letter-complaint filed by CASCONA, the National Electrification Administration (NEA) issued its Resolution, dated November 24, 2004, removing respondents Jose Dominguez, Isias Vidua, Vicente Barreto, Jose Santiago, Jose Naseriv Dolojan, Juan Fernandez, and Honorario Dilag, Jr., (Dominguez, et al.) and all incumbent members of the Board of Directors of ZAMECO II for mismanagement of funds and expiration of their term of office.[3]

Dominguez, et al. appealed the November 24, 2004 resolution of the NEA to the Court of Appeals (CA) on the ground that Republic Act (R.A.) No. 9136 or the Electric Power Industry Reform Act (EPIRA) abrogated the regulatory and disciplinary power of the NEA over electric cooperatives.

In its Decision, dated March 13, 2007, the CA upheld the authority of the NEA over ZAMECO II. Aggrieved, Dominguez, et al. appealed to this Court and argued that the power of the NEA to supervise and control electric cooperatives had been abrogated by the EPIRA. They further stated that they had registered ZAMECO II as a cooperative under respondent Cooperative Development Authority (CDA), and, thus, it was the CDA which had regulatory powers over ZAMECO II.[4]

On March 13, 2009, the Court promulgated its decision in G.R. Nos. 176935-36 which held that "[t]he passage of the EPIRA xxx did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives." [5] The Court further ruled that there was substantial evidence to justify the penalty of removal from office imposed by NEA against the board members, Dominguez, et al.[6]

With respect to the issue of ZAMECO II being under the regulatory powers of the CDA in view of its registration, the Court declared then that the matter could not be adjudicated yet. It stated that the EPIRA provided that an electric cooperative must first convert into either a stock cooperative or stock corporation before it could register

under the CDA. "[W]hether ZAMECO II complied with the foregoing provisions, particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, is a question of fact which this Court shall not review. At any rate, the evidence on record does not afford us sufficient basis to make a ruling on the matter. The remand of the case to the Court of Appeals solely on this question is, therefore, proper." [7] The decretal portion of the decision reads:

WHEREFORE, the instant case is hereby REMANDED to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

SO ORDERED. [8]

On May 4, 2009, Dominguez, et al. moved for reconsideration, but their motion was denied by the Court on August 10, 2009. [9] In view of the denial, an Entry of Judgment was issued on September 2, 2009. Dominguez, et al. promptly filed a motion to set aside the entry of judgment on the sole ground that the March 13, 2009 Decision of the Court was an interlocutory order. [10]

On February 3, 2010, the Court granted the motion of Dominguez, et al. and recalled the Entry of Judgment. The March 13, 2009 Decision was indeed interlocutory in character as there was still something to be done by the CA because it would still determine whether the proceedings outlined in the EPIRA and its Implementing Rules and Regulations (IRR), for the conversion of an electric cooperative into a stock cooperative under the CDA, had been complied with. In this sense, the March 13, 2009 Decision could not have attained a final and executory character. [11]

Meanwhile, by virtue of the November 24, 2004 Resolution of the NEA, ZAMECO II was managed and operated by an interim board of directors under the authority and supervision of NEA. [12]

On September 1, 2009, respondent Atty. Fulgencio Vigare (Atty. Vigare), as CDA Administrator for Luzon, issued the Memorandum, [13] declaring that the CDA should assume jurisdiction over ZAMECO II. It stated, among others, that in the August 26, 2009 hearing of the House of Representatives Committee on Cooperative Development (August 26, 2009 House Committee Hearing), the NEA readily acceded that the CDA should assume jurisdiction over ZAMECO II. [14] Also, a task force was created primarily to reinstate the duly-recognized incumbent members of the board of directors who should perform their functions until such time as elections were conducted, and their successors should have been elected and qualified. [15]

Pursuant to the said memorandum, on October 19, 2009, the CDA issued Resolution No. 262, S-2009 [16] which created a team composed of the respondent-officers of the CDA. The team was mandated to meet with the ZAMECO II management about its issues and concerns; to pave the way for the conduct of the election of officers; and to seek the opinion of the Department of Justice (DOJ) about the jurisdiction of the CDA over electric cooperatives. The said resolution was implemented by Special Order 2009-304 issued on October 20, 2009. [17]

According to CASCONA, on October 22, 2009, respondents Fidel Correa, Alicia Mercado and Angelito Sacro (Sacro) entered the ZAMECO II premises and refused to leave. Come night fall, respondent-members of the PNP and security guards assembled outside the gates of ZAMECO II but were not allowed inside the premises.

The next day, on October 23, 2009, respondents P/Insp. Gerry Haduca and P/Insp. Robin Fugiran asked the

interim President of ZAMECO II for a discussion. When the latter opened the gates, the respondent PNP members and security guards forcefully entered the grounds of ZAMECO II. The interim board of directors did not surrender the management of ZAMECO II to the respondents.

On October 24, 2009, respondents Jose Dominguez and two other former board members (Jose Naseriv Dolojan and Juan Fernandez) arrived at the electric cooperative premises. Tensions only de-escalated when the respondent-PNP members left the scene through the intervention of Governor Amor Deloso.

Hence, this present petition for indirect contempt.

ISSUE

WHETHER THE ACTS OF RESPONDENTS IN ATTEMPTING TO TAKE CONTROL OF ZAMECO II AND ULTIMATELY REINSTATE THE RESPONDENTS-FORMER BOARD MEMBERS TO THEIR FORMER POSITIONS DESPITE THE RULING OF THE SUPREME COURT UPHOLDING THE VALIDITY OF THE REMOVAL OF THE RESPONDENTS-FORMER BOARD MEMBERS FROM THEIR POSITIONS AND THE PENDENCY OF THE PROCEEDINGS BEFORE THE COURT OF APPEALS ARE PUNISHABLE AS INDIRECT CONTEMPT UNDER RULE 71, SECTION 3 (B), (C) AND (D).[18]

CASCONA asserts that the respondents committed several acts of indirect contempt as follows: first, the CDA officials issued the September 1, 2009 Memorandum for the takeover of jurisdiction over ZAMECO II; second, CDA also issued Resolution No. 262, S-2009 and Special Order 2009-304 which scrutinized the management and operation of ZAMECO II; and lastly, the respondents attempted to forcefully occupy ZAMECO II on October 22, 2009. According to CASCONA, these acts clearly pre-empted the Court's decision in G.R. Nos. 176935-36.

CASCONA contends that, with the intent of reinstating Dominguez, et al. and under the guise of the purported authority of the CDA over ZAMECO II, the respondents acted in conspiracy, took the law into their own hands, and attempted to take control of ZAMECO II.

On February 10, 2011, Dominguez, et al., filed their Comment to Petition.[19] They argue, first, that the March 13, 2009 Decision of the Court in G.R. Nos. 176935-36 was not yet final and executory, thus, they had not been ordered to do or refrain from doing any act. Second, R.A. No. 9520 or the Philippine Cooperative Code of 2008, which took effect on March 22, 2009, divested the NEA of its authority over electric cooperatives in favor of the CDA. Lastly, the respondents cited the CA decision, *Abdon v. NEA*, [20] which held that it was the CDA, and not the NEA, that had regulatory powers over ZAMECO II.

On May 31, 2011, respondents Mildred Esguerra (Esguerra) and Antonio Apalisok (Apalisok), as officials of the CDA, filed their compliance with urgent request not to be disciplinarily dealt with or held in contempt.[21] They professed that they excluded themselves from the team created by Resolution No. 262, S-2009 and Special Order 2009-304 because the creation of this team would place them at a grave risk of being punished for contempt by the Court.[22]

On June 9, 2011, respondents Atty. Vigare and Sacro, as officials of the CDA, filed their Comment to Petition[23] which essentially concurred with that of respondents Dominguez, et al.

On April 10, 2013, CASCONA filed its Reply[24] stating that the May 31, 2011 compliance filed by respondents Esguerra and Apasilok admitted the contemptuous acts of their co-respondents.

Preliminary Matters

Before proceeding with the Court's ruling on the indirect contempt charge, several developments in the main case of *ZAMECO II v. CASCONA*, docketed as G.R. Nos. 176935-36, must be noted.

On March 25, 2010, the CA submitted its Report pursuant to the March 13, 2009 decision of the Court. The CA found that the registration of ZAMECO II with the CDA did not comply with the referendum requirement under the IRR of EPIRA. In the absence of a referendum, ZAMECO II failed to obtain the required simple majority vote in order to validly convert it into either a stock cooperative or a stock corporation.[25]

On October 20, 2014, the Court promulgated the decision in G.R. Nos. 176935-36. It finally ruled that ZAMECO II was an electric cooperative and remained under the jurisdiction of the NEA, and not the CDA, based on (1) R.A. No. 6939 or Cooperative Code of 1990, (2) R.A. No. 9136 or EPIRA, (3) R.A. No. 9520 or Philippine Cooperative Code of 2008, and (4) R.A. No. 10531, or the National Electrification Administration Reform Act of 2013.

The Court also declared that the CDA's issuance of a certificate of registration in favor of ZAMECO II in December 2007 did not operate to divest the NEA of its jurisdiction because Dominguez, et al. failed to comply with the statutory requirement of conversion outlined under the EPIRA.

The Court's Ruling

The petition is meritorious.

Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.[26]

There are two (2) kinds of contempt of court, namely: direct and indirect. Indirect contempt or constructive contempt is that which is committed out of the presence of the court.[27] A person who is guilty of disobedience or of resistance to a lawful order of a court or who commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt.[28]

Also, a contempt charge can either be criminal or civil in nature. A criminal contempt involves a conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Civil contempt on the other hand, consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.[29]

In the case at bench, the respondents committed several acts which constituted indirect contempt. The CDA issued the September 1, 2009 Memorandum stating that it had jurisdiction over ZAMECO II and could reinstate the former members of the Board of Directors. The CDA officials also issued Resolution No. 262, S-2009 and Special Order 2009-304 to interfere with the management and control of ZAMECO II. Armed with these issuances, the other respondents even tried to physically takeover ZAMECO II on October 22, 2013. These acts were evidently against the March 13, 2009 decision of this Court and, thus, constituted indirect contempt against the Court. These contemptuous acts are criminal in nature because these obstruct the administration of justice and tend to bring the court into disrepute or disrespect. Section 3, Rule 71 of the Rules of Court enumerates the acts which amount to indirect contempt, to wit:

Section 3. Indirect contempt to be punished after charge and hearing.

x x x x x x x x

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting

direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x

The respondents argue that the March 13, 2009 decision in G.R. Nos. 176935-36 did not order them to do any act or refrain from doing an act. Hence, they did not, in any manner, disobey or resist a lawful writ, process, order or judgment.

The defense of the respondents does not persuade. The March 13, 2009 decision should not be taken in isolation. A perusal of the said decision shows that there were several pronouncements which must be respected and obeyed, to wit: first, the CA shall make a factual determination as to the propriety of ZAMECO II's registration with the CDA; second, the continuing jurisdiction of the Court, as the case is not yet final and executory; and lastly, that there is substantial evidence to justify the removal from office of respondents Dominguez, et al.

Precisely, the Court remanded the case to the CA to determine whether ZAMECO II was properly registered as a stock cooperative under the CDA. Until the CA properly had ascertained such fact, the Court could not determine conclusively that the CDA had supervisory powers over ZAMECO II. The parties were then expected to maintain status quo and refrain from doing any act that would pre-empt the final decision of the Court. Hence, the Court continued to exercise its jurisdiction in G.R. Nos. 176935-36 until a final decision was promulgated. The respondents, however, unreasonably interfered with the proper procedure mandated by the Court when they decided for themselves that the CDA had jurisdiction over ZAMECO II. This constituted a contemptuous act because it unlawfully interfered with the processes or proceedings of a court.

Worse, the respondent-officials. of the CDA, fully aware of the Court's pronouncement,[30] attempted to reinstate respondents Dominguez, et al. despite the existence of substantial evidence that warrant the latter's removal from office. Glaringly, this grave allegation was never refuted by the respondents. Dominguez, et al. were found unfit to hold office yet the respondents relentlessly endeavoured to return them to the seat of power in ZAMECO II. This blatant disregard of the March 13, 2009 decision of the Court is an improper conduct that impedes, obstructs, or degrades the administration of justice.

The respondents justify their acts by stating that in the August 26, 2009 House Committee Hearing, the NEA acceded to the jurisdiction of the CDA over ZAMECO II. This contention, however, is completely unsubstantiated. Notably, respondents Esguerra and Apalisok admitted that the creation of a task force to take over ZAMECO II would place dire consequences against the CDA. Even CDA Regional Director Manuel A. Mar doubted that the NEA consented to the authority of the CDA over ZAMECO II.[31]

Indeed, the October 20, 2014 decision of the Court in G.R. Nos. 176935-36 conclusively settled that it is NEA, and not the CDA, that has jurisdiction and disciplinary authority over ZAMECO II. The substantial issues of the case have now been laid to rest. The Court, however, cannot turn a blind eye to the contemptuous acts of the respondents during the pendency of the case. If the Court condones these acts of interference and improper conduct, it would set a dangerous precedent to future litigants in disregarding the interlocutory orders and processes of the Court.

Liability of the Respondents

The Court cannot agree with CASCONA that all of the respondents were in conspiracy to commit the contemptuous acts. CASCONA failed to substantiate its claim that all the respondents acted in unison to disobey the March 13, 2009 decision of the Court. It was established that only the CDA officials and the former board

members who pursued to reinstate Dominguez, et al. to ZAMECO II. Thus, the other respondents, the PNP members and security guards merely acted as a conduit of their contumelious intent.

Respondents Esguerra and Apalisok cannot be adjudged liable because they did not participate in the acts complained of as evidenced by the November 5, 2009 Memorandum,[32] Also, respondents Lecira Juarez, Alicia Mercado and Juan Fernandez cannot be affected by this decision because they were not properly notified by the processes of the Court as CASCONA failed to provide their proper addresses.[33] With respect to respondent Jose Santiago, records show that he has passed away as shown by his death certificate.[34]

Section 7, Rule 71 of the Rules of Court provides for the penalties for indirect contempt, as follows:

If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five thousand pesos or imprisonment not exceeding one (1) month, or both. If the contempt consists in the violation of a writ of injunction, temporary restraining order or status quo order, he may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved.

X X X X X X X X

Based on the circumstances of the case, a fine amounting to Ten Thousand Pesos (P10,000.00) is a sufficient penalty to be imposed against each liable contemnor.

WHEREFORE, finding Jose S. Dominguez, Isias Q. Vidua, Vicente M. Barreto, Jose Naseriv C. Dolojan, and Honorario Dilag, Jr., as former board members of ZAMECO II, and Atty. Fulgencio Vigare, Jr. and Angelito U. Sacro, as CDA officials, GUILTY of indirect contempt for attempting to pre-empt the final decision of the Court in G.R. Nos. 176935-36, the Court orders each of them to pay a FINE of Ten Thousand Pesos (P10,000.00), within ten (10) days from the finality of this decision.

SO ORDERED.

Brion,[*] (Acting Chairperson), Del Castillo, Perlas-Bernabe,**] and Leonen, JJ., concur.

[*] Per Special Order No. 1955, dated March 23, 2015.

[**] Designated Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1956, dated March 23, 2015.

[1] Rollo, pp. 40-62. Penned by Associate Justice Dante O. Tinga with Associate Justice Leonardo A. Quisumbing, Conchita Carpio Morales, Presbitero J. Velasco, Jr. and Arturo D. Brion, concurring .

[2] 600 Phil. 365 (2009).

[3] Id. at 371.

[4] Id. at 44-45.

[5] Id. at 50.

[6] Id. at 59.

[7] Id. at 61.

[8] Id.

[9] Id. at 63-65.

[10] ZAMECO II v. CASCONA, G.R. Nos. 176935-36, October 20, 2014.

[11] Id.

[12] Rollo, p. 8; The members of the interim Board of Directors of ZAMECO II are Dominador A. Gallardo, Ryan A. Gonzales, Antonio C. Escobar, Leo L. Lozanida, Armando V. Alcones, Jr., Frederick F. Torres, Rogelio Eglan, and Valiente Bertes.

[13] Id. at 70-73.

[14] Id. at 71.

[15] Id. at 73.

[16] Id. at 76-77.

[17] Id. at 75.

[18] Id. at 19.

[19] Id. at 168-178.

[20] CA-G.R. SP No. 108553, November 27, 2009.

[21] Rollo, pp. 234-237.

[22] Id. at 243-244.

[23] Id. at 254-257.

[24] Id. at 327-340.

[25] ZAMECO II v. CASCONA, *supra* note 10.

[26] Ligon v. RTC Br. 56, Makati City, G.R. No. 190028, February 26, 2014, 717 SCRA 373, 386.

[27] Re: Conviction of Judge Adoracion G. Angeles, RTC, Br. 121, Caloocan City in Crim. Cases Q-97-69655 to 56 for Child Abuse, 567 Phil. 189, 203-204 (2008).

[28] Capitol Hills Golf & Country Club, Inc. v. Sanchez, G.R. No. 182738, February 24, 2014 717 SCRA 294, 305.

[29] Fortun v. Quinsayas, G.R. No. 194578, February 13, 2013, 690 SCRA 623, 637.

[30] Id. at 66.

[31] Id. at 245-246.

[32] Id. at 243-244.

[33] Id. at 205-207, 369.

[34] Id. at 354-355.

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