

**ATTORNEY CELSO D. LAVIÑA, REMEDIOS M. MUYOT, SPOUSES  
VIRGILIO D. CEBRERO AND SECUNDINA MAGNO-CEBRERO,  
PETITIONERS, VS. HONORABLE COURT OF APPEALS AND JOSEFINA  
C. GABRIEL, RESPON...**

*G.R. Nos. 78295 & 79917. April 10, 1989*

Ponente: GRIÑO-AQUINO, J.

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**GRIÑO-AQUINO, J.:**

Two petitions were filed in this Court to review: (1) the contempt resolution dated May 4, 1987, of the Court of Appeals, and (2) its decision dated September 15, 1987 in a special civil action of certiorari (CA-G.R. SP No. 11260).

G.R. No. 78295. -

Assailed in G.R. No. 78295 is the resolution dated May 4, 1987 of the Court of Appeals: (a) annulling Judge Vicencio's order cancelling the notice of lis pendens on the title of the disputed property; (b) ordering the Register of Deeds of Manila to revive the said notice of lis pendens; and (c) requiring Judge Vicencio, his branch clerk of court, Virgilio Caballero, and petitioner, Attorney Celso Laviña, to show cause, within one week from notice, why they should not be punished for contempt of court for having disobeyed the temporary restraining order of the Court of Appeals.

On April 6, 1983, Maria Carmen Gabriel y Paterno, single, 72 years old, executed a donation mortis causa, in favor of her widowed sister-in-law, Josefina C. Gabriel, 75 years of age, over a 3,081-square-meter parcel of land with improvements in Sampaloc, Manila, covered by Transfer Certificate of Title No. 155865 in Carmen's name. The donation was thumbmarked by Carmen before Notary Public Jose T. Constantino. It was accepted by the donee in the same instrument (pp. 77-82 & 293, Rollo, G.R. No. 79917).

Four months later, on August 11, 1983, Carmen, who was already gravely ill with breast cancer, executed a Last Will and Testament in which she bequeathed the same Sampaloc property to her cousin and companion, Remedios C. Muyot, and willed a small 240-square-meter lot in Antipolo, Rizal (TCT No. 278-6) to Josefina. She named a friend, Concepcion M. De Garcia, as executrix of her will (pp. 288-291, Rollo, G.R. No. 79917).

On August 15, 1983, Carmen executed a General Power of Attorney appointing Remedios M. Muyot, as her attorney-in-fact for the following purposes:

"1. To administer, take charge, and manage for my sole benefit, all my properties, whether real or personal, wheresoever located;

"2. To collect, demand and recover all debts, notes or sums of money due me now or which in the future may become due or payable to me, and for this purpose, to issue such receipts, papers, or deeds, in my name and stead; to cash or endorse checks drawn in my favor, to deposit in, or withdraw from, any accounts with any banks wherever I may have savings, checking, or time deposit accounts;

"3. To execute, sign, authenticate, and enter into any and all contracts and agreements for me and in my name with any person or entity; and, if necessary to settle my personal obligations, such as for medical expenses, to mortgage or to dispose of for value any or portion of any of my properties, whether real or personal; and

"4. To bring suit, defend, and enter into compromises in my name and stead, in connection with actions brought for or against me, of whatever nature and kind." (Annex D, p. 61, Rollo, G.R. No. 79917.)

On November 3, 1983, Josefina registered an adverse claim on the title of the Sampaloc property based on the donation made by Carmen in her favor (p. 98, Rollo, G.R. No. 79917).

The next day, November 4, 1983, Remedios Muyot, as Carmen's attorney-in-fact, hired Atty. Celso D. Laviña, as Carmen's counsel, on a 30% contingent fee basis (Annex E, p. 62, Rollo, G.R. No. 79917).

On November 19, 1983, Carmen thumbmarked an "AFFIDAVIT OF DENIAL" repudiating the donation of the Sampaloc property to Josefina because it was allegedly procured through fraud and trickery. She alleged that in April 1983, she still could sign her name, and that she had no intention of donating the property to Josefina who had not done her any favor and in fact abandoned her during her illness (pp. 100 and 113, Rollo, G.R. No. 79917).

On the same occasion, November 19, 1983, she thumbmarked a "REVOCATION OF DONATION" before Notary Public James Beltran (p. 85, Rollo, G.R. No. 79917).

Two days later, on November 21, 1983, Remedios Muyot, as Carmen's attorney-in-fact, sold the Sampaloc property to Virgilio D. Cebrero for an alleged consideration of P2,664,655 (p. 88, Rollo, G.R. No. 79917).

On November 29, 1983, Carmen passed away (Annex C, p. 83, Rollo, G.R. No. 79917).

On December 1, 1983, the "REVOCATION OF DONATION" was registered on the back of Carmen's TCT No. 155865 (p. 119, Rollo, G.R. No. 79917).

On December 5, 1983, Josefina filed a complaint in the Regional Trial Court of Manila against Carmen's estate and the Register of Deeds of Manila to annul the Deed of Revocation of Donation (Civil Case No. 83-21629). She alleged that the deed of revocation, made only ten (10) days before Carmen's death, was false and fictitious. She asked the court to appoint an administrator ad litem for the estate of Carmen P. Gabriel (Annex B, p. 55, Rollo, G.R. No. 79917). Upon filing the complaint, she caused to be recorded a Notice of Lis Pendens on the title of the property (p. 98, Rollo, G.R. No. 79917).

Without appointing a special administrator for Carmen's estate, the court caused summons to be served on the estate. The summons was received by Remedios Muyot (Annex C, p. 60, Rollo, G.R. No. 79917).

On January 24, 1984, the Cebreros registered the sale of the Sampaloc property to them and obtained TCT No. 158305 in their names (p. 90, Rollo, G.R. No. 79917).

On February 6, 1984, Josefina's complaint was amended to implead Muyot and the Cebrero spouses as additional defendants. In addition to the original causes of action, the amended complaint sought the nullification of Muyot's General Power of Attorney and the sale of the Sampaloc property to the Cebrero spouses (Annex G, p. 68, Rollo, G.R. No. 79917).

Atty. Laviña filed an Answer (later an "Amended Answer with Compulsory Counterclaim") for the Estate and Muyot (Annexes H and I, pp. 91 and 105, Rollo, G.R. No. 79917).

Thereupon, Josefina filed a motion to disqualify him on the ground that his authority as counsel for Carmen was extinguished upon her death. She also assailed the service of summons to the decedent's Estate through Muyot and reiterated her motion for the appointment of a special administrator for the Estate. Atty. Laviña opposed the

motions (Annexes K and L, pp. 125 and 130, Rollo, G.R. No. 79917).

On September 23, 1986, Judge Vicencio denied Josefina's motion to disqualify Atty. Laviña. He also denied the motion to appoint a special administrator for the Estate "since the deceased left a Will naming an administratrix (executrix), and the latter has accepted the trust." He sustained his court's jurisdiction over the Estate based on the service of summons upon Muyot (Annex P, p. 179, Rollo, G.R. No. 79917).

On January 23, 1987, Cebrero filed a motion to cancel the notice of lis pendens on the Sampaloc property (Annex B, Rollo, G.R. No. 78295). Before Judge Vicencio could act on it, Josefina filed a petition for certiorari on February 6, 1987 in the Court of Appeals (CA-G.R. SP No. 11260) assailing Judge Vicencio's order of September 23, 1986 (Annex P, p. 179, Rollo, G.R. No. 79919) and praying for a writ of preliminary injunction to stop him from further proceeding in Civil Case No. 83-21629 (Annex V, p. 236, Rollo, G.R. No. 79917). The Court of Appeals issued a restraining order on February 10, 1987, ordering the lower court to "desist from proceeding with Civil Case No. 83-21629 until further orders." (Annex W, p. 260, Rollo, G.R. No. 79917.)

However, on March 16, 1987, in spite of the restraining order, Judge Vicencio issued an order cancelling the notice of lis pendens (Annex N, p. 170, Rollo, G.R. No. 78295) because he believed the Appellate Court's restraining order of February 10, 1987 expired on March 3, 1987, i.e., after 20 days.

On motions of Josefina (Annex O, p. 153, Rollo, G.R. No. 79917 and Annex P, p. 178, Rollo, G.R. No. 78295), the Court of Appeals, on May 4, 1987, set aside Judge Vicencio's order and required him, as well as his branch clerk of court and Attorney Laviña to show cause why they should not be punished for contempt of court. The Court of Appeals held that the 20-day limitation on the life of a restraining order did not apply to it but only to lower court "judges," for Section 5 of BP Blg. 224 provides that:

"x x x, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the judge must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted x x x."

While the Appellate Court was aware that Section 8 of the Interim Rules uses the word "court" instead of "judges," it opined that:

"1. x x x the Interim Rules was not meant to effect, modify or alter BP 224 which took effect in 1982, subsequent to the enactment of BP 129, particularly so since BP 224 specifically governs the exclusive subject of restraining orders, whereas the Interim Rules treats of the broad Judiciary Reorganization Act of 1981.

"2. BP 224 is a legislative act laying down a substantive policy regulating the issuance and effectivity of restraining orders issued by 'judges,' specifically decreeing a limitation of 20 days to such orders of 'judges.'

"The highest tribunal of the land in National Dental Supply Co. vs. Bibiano Meer, 90 Phil. 265 x x x ruled in no uncertain terms that the Supreme Court in the exercise of its rule-making power cannot repeal or alter a substantive piece of legislation." (p. 49, Rollo, G.R. No. 78295.)

The Court of Appeals further observed that the application of BP Blg. 224 to "judges" only "springs from practical considerations evident from the Rule itself." (p. 51, Rollo, G. R. No. 78295.) It pointed out that:

"x x x. Rule 58, as amended by BP 224 requires -- upon issuance of a restraining order and within 20 days from said issuance -- that 'the judge must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted . . .' In other words, an actual hearing on the application for injunction must be scheduled; the parties must be notified thereof; and immediately thereafter,

the judge must resolve the application -- all within twenty (20) days from the date of issuance of the restraining order. The clearly recognized implication being that after said period -- whether the parties have already received notice or not, whether the hearing has been conducted or not -- the restraining order if not yet converted into an injunction by then, automatically self-destructs. Certainly, while these pressing time and procedural constraints may reasonably be brought to bear upon the Regional Trial Courts whose injunctive writs may be enforced only within the narrow confines of their respective regions (Sec. 3[a], Interim Rules and Guidelines), they cannot sensibly be imposed upon the Court of Appeals and the Honorable Supreme Court whose territorial jurisdiction stretches to the many ends of our broad archipelago." (Underscoring supplied.) (pp. 51-52, Rollo, G.R. No. 78295.)

On May 26, 1987, Laviña, Muyot, and Cebrero filed in this Court a petition for certiorari and prohibition (G.R. No. 78295) assailing that resolution. They prayed that the Court of Appeals be enjoined from further proceeding in CA-G.R. SP No. 11260.

Without giving due course to the petition, We ordered the respondents to comment (p. 189, Rollo, G.R. No. 78295).

During the pendency of G.R. No. 78295, and eleven (11) months after the Court of Appeals issued the assailed order on May 4, 1987, this Court rendered a divided opinion in another case, "Delbros Hotel Corporation vs. The Intermediate Appellate Court, et al." (G.R. No. 72566, April 12, 1988), defining the scope of BP Blg. 224. In a ten to four decision with one abstention, this Court held:

"The applicability of the above-quoted provision (Sec. 5, B.P. Blg. 224) to the then Intermediate Appellate Court, now the Court of Appeals, can hardly be doubted. The Interim Rules and Guidelines were promulgated to implement the Judiciary Reorganization Act of 1981 (B.P. Blg. 129) which include the Intermediate Appellate Court among the courts organized thereunder. This is emphasized in the preamble of the Interim Rules which states that the same shall apply to 'all inferior courts according to the Constitution.' The term 'inferior courts' as used therein refers to all courts except the Supreme Court, the Sandiganbayan and the Court of Tax Appeals. Thus, paragraphs 14 and 15 of the Interim Rules expressly provide for 'Procedure in the Intermediate Appellate Court.'

"Indeed, if paragraph 8 of the Interim Rules were not intended to apply to temporary restraining orders issued by the respondent Court, there would have been absolutely no reason for the inclusion of said paragraph in the Interim Rules. The limited life-span of temporary restraining orders issued by the regional trial courts and municipal trial courts is already provided for in B.P. Blg. 224. It was precisely to include the Intermediate Appellate Court within the same limitation as to the effectivity of its temporary restraining orders that B.P. Blg. 224 was incorporated in the Interim Rules, with the significant change of the word 'judge' to 'court,' so as to make it clear and unequivocal that the temporary restraining orders contemplated therein are those issued not only by trial judges but also by justices of the appellate court." (Delbros Hotel Corporation vs. Intermediate Appellate Court, supra.)

This decision sustains Judge Vicencio's, not the Court of Appeals', interpretation of BP Blg. 224. However, this circumstance does not excuse his defiance of the Appellate Court's restraining order, for the heart of the issue in this case, is not whether the Court of Appeals correctly interpreted BP Blg. 224, but whether petitioners' disobedience of the Appellate Court's restraining order was contemptuous. We hold that it was.

Before the promulgation of the Delbros decision on April 12, 1988, there existed no jurisprudence interpreting "judges" as used in BP Blg. 224, to include the justices of the Court of Appeals also. Hence, even if Judge Vicencio thought that Court of Appeals justices were covered by BP Blg. 224, out of respect for the second highest court of the land, he should have obeyed its explicit mandate for him to desist from proceeding with Civil Case No. 83-21629 "until further orders." His disobedience of that lawful order of the Court was contemptuous

(Sec. 3-b, Rule 71, Rules of Court). His rushing to lift the notice of *lis pendens* barely four (4) days before his retirement from the Bench on March 20, 1987, and while his own jurisdiction in the case was still in issue, puts his motives under a cloud.

If the petitioners wanted the Court of Appeals to hear Josefina's application for a preliminary writ of injunction within twenty (20) days after it issued the temporary restraining order, they should have filed a motion to that effect, or, they should have asked the Court to limit the duration of its restraining order. Instead, without notice to the other party or to the Court of Appeals, they persuaded the trial judge to grant their pending motion to cancel the notice of *lis pendens*. The secrecy that shrouded that maneuver is a badge of their bad faith and constitutes contempt for the Appellate Court that issued the restraining order.

G.R. No. 79917. -

During the pendency of G.R. No. 78295 in this Court, the Court of Appeals rendered a decision on September 15, 1987 in CA-G.R. SP No. 11260, granting Josefina's petition for certiorari, prohibition and mandamus. The dispositive part of its decision reads:

"WHEREFORE, based on all the foregoing considerations, judgment is hereby rendered: (1) annulling the assailed order dated 12 January 1987 as well as its related earlier order of September 23, 1986; (2) declaring that the lower court did not acquire jurisdiction over the person of the estate of Maria Carmen P. Gabriel; (3) ordering respondent Atty. Celso Laviña to refrain from representing the estate of the deceased Maria Carmen P. Gabriel in Civil Case No. 83-21629; and (4) declaring that all pleadings, motions and papers filed by Atty. Laviña are sham and ordered expunged from the records of said case.

"Resolution of the contempt incident against respondent judge, Atty. Laviña and the branch clerk of court of respondent judge is hereby held in abeyance pending the Supreme Court's resolution of respondent's petition for review." (pp. 53-54, Rollo, G.R. No. 79917.)

Within the 30-day extension granted by this Court, Attorney Laviña, Remedios Muyot, and the Cebrero spouses appealed by certiorari to this Court where their petition was docketed as G.R. No. 79917. The case was later consolidated with G.R. No. 78295.

The Court of Appeals held that Attorney Laviña may not appear "as counsel for the estate of Carmen P. Gabriel because his authority as her counsel was extinguished upon Carmen's death" (Art. 1919, Civil Code). It also held that "respondent Remedios Muyot was not capacitated to receive summons for the estate because the general power of attorney constituting her as agent of the deceased became inoperative upon the death of the principal." The service of summons upon her was void (pp. 52-53, Rollo, G.R. No. 79917).

However, the Court held that a special administrator need not be appointed for the estate in Civil Case No. 83--21629 as the last will and testament of Maria Carmen P. Gabriel had been allowed probate on 3 February 1987 in Sp. Proc. No. 84-23954 and letters testamentary had been issued to the duly designated executrix, Concepcion M. de Garcia (p. 54, Rollo, G.R. No. 79917), to represent the Estate.

The petitioners allege in their petition for review of the decision that the Court of Appeals erred:

1. in holding that the trial court had not acquired jurisdiction over the estate of Carmen P. Gabriel; and
2. in holding that Attorney Celso Laviña's authority as counsel for Carmen P. Gabriel was extinguished upon her death.

The petitioners' argument that service of the summons on Remedios Muyot was valid and sufficient to vest jurisdiction in the Court over the Estate of Carmen P. Gabriel, because Muyot was Carmen's attorney-in-fact, is

not correct. The estate of a dead person may only be summoned through the executor or administrator of his estate for it is the executor or administrator who may sue or be sued (Sec. 3, Rule 3, Rules of Court) and who may bring or defend actions for the recovery or protection of the property or rights of the deceased (Sec. 2, Rule 87, Rules of Court). The general power of attorney appointing Remedios as Carmen's agent or attorney-in-fact was extinguished upon Carmen's demise (Art. 1919[3], Civil Code; Ramos vs. Caoibes, 94 Phil. 440; Hermosa vs. Longara, 93 Phil. 977). Thereafter, Remedios was bereft of authority to represent Carmen.

The petitioner's contention that the agency was "constituted in the common interest of the principal and the agent" and that hence it was not extinguished by the death of the principal (Art. 1930, Civil Code) is refuted by the instrument itself which explicitly provided that the powers conferred on the agent were to be exercised for the "sole benefit" of the principal, Carmen P. Gabriel (Annex D, p. 61, Rollo, G.R. No. 79917).

Carmen's death likewise divested Attorney Laviña of authority to represent her as counsel. A dead client has no personality and cannot be represented by an attorney (Barrameda vs. Barbara, 90 Phil. 718, 723; Caisip vs. Hon. Cabangon, 109 Phil. 150).

WHEREFORE, finding no reversible error in the appealed decision and orders of the Court of Appeals in CA-G.R. SP No. 11260, the petitions for review are dismissed with costs against the petitioners.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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