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SECOND DIVISION

[A.M. No. RTJ-00-1560. July 5, 2000]

MARTIN V. BRIZUELA, *complainant, vs.* **JUDGE RUBEN A. MENDIOLA and CLERK OF COURT JOSEFINA E. COSTIN, both of the Regional Trial Court, Branch 63, Makati City,** *respondents.*

SYNOPSIS

This is a verified complaint against Judge Ruben A. Mendiola of the Regional Trial Court of Makati City, Branch 63, and former Branch Clerk of Court Josefina E. Costin for misconduct for having ordered the cancellation of the notice of *lis pendens* which complainant had caused to be annotated on the title to a certain parcel of land in litigation and for having issued a false certification, respectively.

Complainant alleged that respondent's order to the Register of Deeds to cancel the notice of *lis pendens* was improper since such notice was caused to be annotated by him in connection with CA G.R. CV No. 47870, an action for annulment of auction sale and issuance of title, then pending before the Court of Appeals. Complainant claimed that the order for cancellation of the notice was made with "indecent haste." With respect to respondent Costin, complainant alleged that she maliciously issued a false certification, dated September 19, 1995, by making it appear that complainant did not file a notice of appeal from the order dated April 19, 1995 granting the issuance of the writ of possession, when in truth he filed one on July 17,1995.

The respondent judge had no power to entertain the motion for cancellation of the notice of *lis pendens* because the annotation of the notice was made in relation to Civil Case No. 94-1394 of Branch 66, Regional Trial Court, Makati, which was then pending appeal in the Court of Appeals in CA-G.R. CV No. 47870. The cancellation of a notice of *lis pendens* is merely incidental to a pending action. Consequently, the matter was for Branch 66 of the RTC, in which Civil Case No. 94-1394 was pending, to resolve. As a matter of fact, it was

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the Court of Appeals, which had jurisdiction over the question since the case was at that time on appeal to that court. Hence, respondent judge's order for the cancellation of the notice of *lis pendens* constituted an interference with the business of the Court of Appeals.

It was wrong for respondent branch clerk of court to certify that the order of August 29, 1995, granting the petition of ICCS for the issuance of an *alias* writ of possession, had become final and executory because no appeal had been taken from it nor a motion for its reconsideration filed. Respondent's certification gives the impression that no notice of appeal was ever filed by the complainant. The issuance of a false certification creates disturbance and should not be allowed to go unpunished. Even if respondent branch clerk of court did not act maliciously in making the certification, she should nonetheless be reprimanded at least for carelessness and obvious lack of awareness of the seriousness of her act. Respondent Judge Mendiola was fined in the amount of ₱5,000.00 and respondent branch clerk of court was reprimanded for negligence and lack of due care in the issuance of a certification.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; RESPONDENT JUDGE'S ORDER FOR CANCELLATION OF THE NOTICE OF *LIS PENDENS* CONSTITUTED AN INTERFERENCE WITH BUSINESS OF THE COURT OF APPEALS IN CASE AT BAR.** — The Investigating Justice correctly observes that respondent judge had no power to entertain the motion for cancellation of the notice of *lis pendens* because the annotation of the notice was made in relation to Civil Case No. 94-1394 of Branch 66, Regional Trial Court, Makati, which was then pending appeal in the Court of Appeals in CA-G.R. CV No. 47870. The cancellation of a notice of *lis pendens* is merely incidental to a pending action. Consequently, the matter was for Branch 66 of the RTC, in which Civil Case No. 94-1394 was pending, to resolve. As a matter of fact, it was the Court of Appeals which had jurisdiction over the question since the case was at that time on appeal to that court. Hence, respondent judge's order for the cancellation of the notice of *lis pendens*

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constituted an interference with the business of the Court of Appeals.

2. **REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR CANCELLATION OF NOTICE OF *LIS PENDENS*; FAILURE TO SERVE NOTICE ON ADVERSE PARTY RENDERED THE MOTION A MERE SCRAP OF PAPER.** — It should be noted that the motion for cancellation of the notice of *lis pendens,* which was filed only at 4:50 in the afternoon of September 20, 1995, was set for hearing on September 22, 1995 in the morning, in disregard of the three-day notice requirement in Rule 15, §4 of the former Rules of Civil Procedure. Such motion was, by its nature, a litigious motion, and the party who caused the recording of the notice of *lis pendens* had a right to contest the relief sought in the motion. Nor does it appear that the motion was served on the complainant or his counsel. Such failure to serve notice on the adverse party rendered the motion a mere scrap of paper which respondent judge should have disregarded.

3. **ADMINISTRATIVE LAW; COURT PERSONNEL; PENALTY OF REPRIMAND IMPOSED UPON RESPONDENT BRANCH CLERK OF COURT FOR NEGLIGENCE AND LACK OF DUE CARE IN ISSUANCE OF FALSE CERTIFICATION IN CASE AT BAR.** — It was therefore wrong for respondent branch clerk of court to certify that the order of August 29, 1995, granting the petition of ICCS for the issuance of an *alias* writ of possession, had become final and executory because no appeal had been taken from it nor a motion for its reconsideration filed. Respondent's certification gives the impression that no notice of appeal was ever filed by the Brizuelas. While it is true that the appeal of the Brizuelas was subsequently denied by the trial court, the fact is that, at the time the certification was issued by respondent branch clerk of court, the appeal of the Brizuelas was still pending in Branch 63. It was only on March 5, 1996 that the court dismissed the appeal on the ground that it was not filed on time. The records do not show to whom the certification was issued and whether, as a result of its issuance, any damage has been caused. Nonetheless, the issuance of a false certification such as the one here in question creates disturbance and should not be allowed to go unpunished. Even if respondent branch clerk of court did not act maliciously in making the certification, she

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should nonetheless be reprimanded at least for carelessness and obvious lack of awareness of the seriousness of her act. The Court therefore reprimanded her for negligence and lack of due care in the issuance of a certification.

APPEARANCES OF COUNSEL

Wilfredo A. Ruiz for respondent Judge.

D E C I S I O N

MENDOZA, *J.*:

This is a verified complaint against Judge Ruben A. Mendiola of the Regional Trial Court, Branch 63, Makati City and former Branch Clerk of Court Josefina E. Costin for misconduct for having ordered the cancellation of the notice of *lis pendens* which complainant had caused to be annotated on the title to a certain parcel of land in litigation and for having issued a false certification, respectively.

The facts are as follows:

In September 1999, complainant Martin Brizuela was granted by the Citibank, N.A. credit facility up to the amount of ₱5,500,000.00 on the security of his property at Magallanes Village, Makati City. In view of differences regarding the computation of the amount owed by him to Citibank, Brizuela demanded a detailed explanation of his account. Citibank, on the other hand, threatened to extrajudicially foreclose the mortgage, claiming that the total availments of Brizuela under the plan amounted to ₱7,935,621.25.

The exchange led to the filing by Brizuela and his wife on May 14, 1991 of a case, docketed as Civil Case No. 91-1381, in the Makati Regional Trial Court for accounting and injunction against Citibank.

After trial, the court rendered judgment on December 3, 1992 dismissing the complaint and lifting the writ of preliminary injunction it had earlier issued. Their motion for reconsideration

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having been denied, the Brizuelas appealed their case to the Court of Appeals, where it was docketed as CA-G.R. CV No. 45243.

Citibank foreclosed the mortgage on complainant's property on February 26, 1993. In the ensuing auction sale, Integrated Credit and Corporate Services Co. (ICCS) emerged as the highest bidder. On March 2, 1993, the sheriff issued a certificate of sale in its favor. After the one-year period of redemption expired on March 3, 1994, ICCS consolidated its ownership over the property and obtained TCT No. 188651 in its name.

On April 6, 1994, the Brizuelas filed a complaint seeking the annulment of the auction sale and the issuance of TCT No. 188651 to ICCS. The case, docketed as Civil Case No. 94-1394, was raffled to Branch 66 of the Makati Regional Trial Court. On motion of the ICCS, however, the trial court dismissed the case. The Brizuelas appealed to the Court of Appeals where their case was docketed as CA-G.R. CV No. 47870.

ICCS then filed a petition for issuance of a writ of possession. The case (LRC Case No. M-3510) was raffled to Branch 63 of the Regional Trial Court, Makati City, which, on April 19, 1995, granted the prayer for the issuance of a writ of possession.

To protect their interest, the Brizuelas caused the recording on May 10, 1995 of a notice of *lis pendens* on TCT No. 188651, invoking the pendency of their appeal in CA-G.R. CV No. 47870 in the Court of Appeals. On May 30, 1995, they moved for the stay of the writ of possession, but, on June 19, 1995, respondent denied their motion. A copy of the order denying stay was received by the Brizuelas on June 23, 1995.

On September 20, 1995, ICCS filed with respondent judge a motion for the cancellation of the notice of *lis pendens*, alleging that the Brizuelas had lost ownership and possession of the property covered by TCT No. 188651. The motion was set for hearing on the morning of September 22, 1995. On the same day, respondent ordered the Register of Deeds of Makati "to cancel the notice of *lis pendens* annotated on TCT No. 188651." The Brizuelas filed a petition for *certiorari* and *mandamus* in

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the Court of Appeals. However, their petition was dismissed for lack of merit in a resolution of the appellate court dated November 15, 1996.

Meanwhile, on motion of the Brizuelas, the Ninth Division of the Court of Appeals ordered the consolidation of CA-G.R. CV No. 45243 and CA-G.R. CV No. 47870.

Charging Judge Mendiola, now retired, with gross ignorance of the law and grave misconduct, complainant alleges that respondent's order to the Register of Deeds to cancel the notice of *lis pendens* was improper since such notice was caused to be annotated by him in connection with CA-G.R. CV No. 47870 (for annulment of sale and issuance of title) then pending before the Court of Appeals. Complainant alleges that the order for cancellation of the notice was made with "indecent haste."

With respect to respondent Josefina E. Costin, former branch clerk of court of Branch 63 of the RTC of Makati City, complainant alleged that she maliciously issued a false certification, dated September 19, 1995, by making it appear that complainant did not file a notice of appeal from the order dated April 19, 1995 granting the issuance of the writ of possession, when in truth he filed one on July 17, 1995.

The complaint in this case was referred to Associate Justice Fermin A. Martin, Jr. of the Court of Appeals who, in a report submitted on April 28, 2000, recommends that respondent judge be held administratively liable for the unwarranted issuance of the order of cancellation of the notice of *lis pendens* and that he be fined in the amount of ₱5,000.00. He also recommends that Atty. Josefina E. Costin be exonerated for lack of evidence.

First, with regard to respondent judge, the Investigating Justice correctly observes that respondent judge had no power to entertain the motion for cancellation of the notice of *lis pendens* because the annotation of the notice was made in relation to Civil Case No. 94-1394 of Branch 66, Regional Trial Court, Makati, which was then pending appeal in the Court of Appeals in CA-G.R. CV No. 47870. Thus, the notice of *lis pendens*, recorded as

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Entry No. 20634 T-188651 of the Registry of Deeds of Makati, states:

> NOTICE OF *LIS PENDENS* — Filed by Martin V. Brizuela, giving notice that an action has been filed in the RTC Makati, Br. 66 in Civil Case No. 94-1394 entitled *Sps. Martin "Noy" Brizuela* and *Zosima Tan Brizuela, plaintiffs, vs. Integrated Credit & Corporate Services, Co., defendants.*

The cancellation of a notice of *lis pendens* is merely incidental to a pending action. Consequently, the matter was for Branch 66 of the RTC, in which Civil Case No. 94-1394 was pending, to resolve. As a matter of fact, it was the Court of Appeals which had jurisdiction over the question since the case was at that time on appeal to that court. Hence, respondent judge's order for the cancellation of the notice of *lis pendens* constituted an interference with the business of the Court of Appeals.

In addition, it should be noted that the motion for cancellation of the notice of *lis pendens*, which was filed only at 4:50 in the afternoon of September 20, 1995, was set for hearing on September 22, 1995 in the morning, in disregard of the three-day notice requirement in Rule 15, §4 of the former Rules of Civil Procedure. Such motion was, by its nature, a litigious motion, and the party who caused the recording of the notice of *lis pendens* had a right to contest the relief sought in the motion. Nor does it appear that the motion was served on the complainant or his counsel.[1] Such failure to serve notice on the adverse party rendered the motion a mere scrap of paper which respondent judge should have disregarded.

Second, as regards respondent Josefina E. Costin, it appears that on September 19, 1995 she issued the following certification:[2]

> This is to certify that the Order of August 29, 1995 has already become final and executory as no appeal nor motion for reconsideration has been filed thereto.

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[1] *Rollo*, p. 89.

[2] *Id.*, p. 9.

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As already stated, the Brizuelas filed a notice of appeal from the order, dated April 19, 1995, of the trial court granting a writ of possession. It was therefore wrong for respondent branch clerk of court to certify that the order of August 29, 1995, granting the petition of ICCS for the issuance of an *alias* writ of possession, had become final and executory because no appeal had been taken from it nor a motion for its reconsideration filed. Respondent's certification gives the impression that no notice of appeal was ever filed by the Brizuelas. While it is true that the appeal of the Brizuelas was subsequently denied by the trial court, the fact is that, at the time the certification was issued by respondent branch clerk of court, the appeal of the Brizuelas was still pending in Branch 63. It was only on March 5, 1996 that the court dismissed the appeal on the ground that it was not filed on time.

The records do not show to whom the certification was issued and whether, as a result of its issuance, any damage has been caused. Nonetheless, the issuance of a false certification such as the one here in question creates disturbance and should not be allowed to go unpunished. Even if respondent branch clerk of court did not act maliciously in making the certification, she should nonetheless be reprimanded at least for carelessness and obvious lack of awareness of the seriousness of her act.

WHEREFORE, respondent Ruben A. Mendiola, former judge of Branch 63, Regional Trial Court, Makati, is FINED in the amount of ₱5,000.00, said amount to be deducted from the balance of his retirement benefits.

Atty. Josefina E. Costin, former branch clerk of court of the same court, is hereby REPRIMANDED for negligence and lack of due care in the issuance of a certification.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ* ., concur.