Supreme Court E-Library

SECOND DIVISION

[A.M. No. RTJ-98-1427. November 27, 2000]

PABLO C. REQUIERME, JR.[1] **and DOMINADOR MAPHILINDO O. CARILLO,** *complainants, vs.* **JUDGE EVANGELINE S. YUIPCO, Regional Trial Court, Branch 6, Prosperidad, Agusan del Sur,** *respondent.*

SYNOPSIS

In a case for recovery of possession and/or specific performance entitled *David Gegato vs. Virgilio Balaqui and Romeo Balaqui* pending before the sala of respondent Judge Evangeline S. Yuipco, the defendants filed a third party complaint against Pablo C. Requierme, Jr. The latter secured the services of the Nograles, Cabebe and Carillo (NCC) Law Offices. Atty. Dominador Maphilindo O. Carillo appeared on behalf of the firm. Requierme, Jr., duly filed an Answer and subsequently filed an Omnibus Motion. On the scheduled hearing, Atty. Lou A. Nueva of the Public Attorney's Office withdrew his appearance as counsel for defendants. However, during the pre-trial conference, Atty. Nueva again appeared. Respondent judge reset the pre-trial conference to March 15, 1994. On said date, defendants were absent. Thus, they were declared "as in default" with respect to the complainant, and "non-suited" with respect to the third party complainant. Defendants filed a Motion to Lift the Order of Default and Opposition to Declare Third Party Plaintiff Non-Suited. Requierme, Jr. promptly filed a Comment/ Opposition on the ground that the Motion to Lift was a mere scrap of paper since it did not contain a notice of hearing and was not directed to the parties but to the Clerk of Court only. But then, the pre-trial conference was set. During the pre-trial conference, respondent judge called the counsels of the parties to her chambers and requested counsels of plaintiff and third party defendant not to oppose the Motion to Lift, in order to

---

[1] "Pablo Q. Requierme" in the Affidavit dated November 29, 1993, *Rollo*, p. 64.

Supreme Court E-Library

give defendants a chance to present their evidence. Thereafter, the case was set for trial. During the presentation of defendants' evidence, Atty. Nueva manifested that he was not presenting any evidence. After hearing, respondent judge, in open court, requested Atty. Carillo not to present evidence on the counterclaims and to take pity on the defendants. When Atty. Carillo insisted on presenting evidence, respondent jduge became unusually strict on the witness. Requierme, Jr. and Atty. Carillo filed a Motion for Disqualification/Inhibition of the Presiding Judge. During the hearing of said motion, Atty. Gerardo C. Nograles from the NCC Law Offices informed the court that he was taking over the case since Atty. Carillo had already resigned from the firm. Respondent judge, however, made derogatory remarks against Atty. Carillo and reset the hearing and specifically ordered Atty. Carillo to appear and prove the allegations in his motion under the penalty of contempt. Respondent judge denied the motion for inhibition and declared Atty. Carillo in direct contempt of court and a fine of ₱500.00 was imposed upon him. Atty. Carillo paid the fine under protest. Hence, Atty. Carillo filed the present administrative case against respondent judge for serious misconduct for acting manifest partiality towards defendants. The Court ruled that the Motion to Lift failed to comply with Sections 4, 5 and 6 of Rule 15 of the Rules of Court, which requires notice to be sent at least three days before the hearing, directed to the parties concerned, stating the time and place of hearing of the motion, with proper proof of notice thereof. For failure to comply with said requirements, the Motion to Lift was a mere scrap of paper, and respondent judge erred in taking cognizance thereof. The failure of respondent judge to attach importance to the standard and fundamental procedure mandated by the Rules of Court renders her administratively liable. In intervening on behalf of the defendants, respondent judge failed to live up to the mandate that a judge should not only be impartial but must also appear impartial. Lastly, there was no legal basis for holding Atty. Carillo guilty of direct contempt for not appearing during a hearing considering that respondent judge was fully apprised that he was no longer the counsel of third party defendant.

Respondent judge was found liable for serious misconduct and ordered to pay a fine of ₱5,000.00.

Supreme Court E-Library

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; CHANGE OF ATTORNEYS; VERBAL SUBSTITUTION OF COUNSEL CONTRAVENES THE REQUIREMENTS OF THE RULES OF COURT.** — A verbal substitution of counsel, albeit impliedly granted by respondent judge, contravenes Section 26 of Rule 138 of the Rules of Court which prescribes the requirements for change of attorneys. Said provision requires that the written consent of the client should be filed in court and the adverse party should be given written notice of the substitution.

2. **REMEDIAL LAW; MOTIONS; REQUIRES PROPER NOTICE OF THE PARTIES THREE DAYS BEFORE THE HEARING; FAILURE OF JUDGE TO ATTACH IMPORTANCE THERETO RENDERS HER ADMINISTRATIVELY LIABLE.** — The Motion to Lift failed to comply with Sections 4, 5 and 6 of Rule 15 of the Rules of Court, which requires notice to be sent at least three days before the hearing, directed to the parties concerned, stating the time and place of hearing of the motion, with proper proof of notice thereof. For failure to comply with said requirements, the Motion to Lift was a mere scrap of paper, and respondent judge erred in taking cognizance thereof. The failure of respondent judge to attach importance to the standard and fundamental procedure mandated by the Rules of Court renders her administratively liable.

3. **LEGAL AND JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; A JUDGE SHOULD NOT ONLY BE IMPARTIAL BUT MUST ALSO APPEAR IMPARTIAL; VIOLATED WHEN THE PRESIDING JUDGE REQUESTED COUNSELS NOT TO OPPOSE MOTION TO LIFT ORDER OF DEFAULT.** — Respondent judge showed partiality when she called counsels for plaintiff and third party defendants to her chambers during a pre-trial conference and requested them not to oppose the Motion to Lift. Canon 3, Rule 3.06 provides that "[w]hile a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during trial, it should always be borne in mind that undue influence may prevent the proper presentation of the cause or the ascertainment of truth." In intervening on behalf of the defendants, respondent judge failed to live up to the mandate that a judge should not only be impartial but must

Supreme Court E-Library

also appear impartial. A judge must behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. We have repeatedly stressed that "[a] judge should be the embodiment of competence, integrity, and independence," and should administer justice impartially and without delay. While a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of truth.

4. **ID.; JUDGES; HEAVY CASELOAD IS NOT AN EXCUSE FOR FAILURE TO ISSUE PRE-TRIAL ORDER.** — The failure to issue a pre-trial order as required by Section 14 of Rule 20 of the Rules of Court cannot be excused by her heavy caseload. It was likewise unthinkable for respondent judge to contend that complainants failed to remind her to issue said order, for it is not their duty, but hers, to issue a pre-trial order.

5. **ID.; ID.; MUST EXERCISE THEIR CONTEMPT POWERS FOR CORRECTION AND PRESERVATION OF ORDER IN JUDICIAL PROCEEDINGS AND NOT FOR RETALIATION OR VINDICATION.** — There is no legal basis for holding Atty. Carillo guilty of direct contempt for not appearing during a hearing considering that respondent judge was fully apprised that he was no longer the counsel of third party defendant. While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and uphold the due respect for the administration of justice, judges should however exercise their contempt powers judiciously and sparingly, with the end in view of utilizing their contempt powers for correction and preservation, not for retaliation or vindication.

6. **ID.; ID.; MUST EXHIBIT MORE THAN JUST A CURSORY ACQUAINTANCE WITH STATUTES AND PROCEDURAL LAWS.** — Judges are called to exhibit more than just a cursory acquaintance with statutes and procedural laws. They are not common men and women, whose errors men forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for complainants.

RESOLUTION

QUISUMBING, *J.*:

In a verified complaint Pablo C. Requierme, Jr. and his counsel, Atty. Dominador Maphilindo O. Carillo, charged Judge Evangeline S. Yuipco with serious misconduct for acting with manifest partiality towards defendants in Civil Case No. 838 entitled "*David Gegato vs. Virgilio Balaqui and Romeo Balaqui*" for recovery of possession and/or specific performance with preliminary injunction and damages.[2]

In said case, plaintiff was represented by Atty. Rolando C. Casaway, while defendants were represented by Atty. Lou A. Nueva of the Public Attorney's Office. Defendants filed a third party complaint[3] against Requierme, Jr. who secured the services of the Nograles Cabebe & Carillo Law Office (NCC Law). Atty. Carillo appeared on behalf of the firm.

Requierme, Jr., through counsel, duly filed an Answer[4] to the third party complaint, and subsequently, an "Omnibus Motion (A) For Preliminary Hearing of Affirmative and/or Special Defense in Answer to Third Party Complaint; Or, In the Alternative; (B) For Summary Judgment.[5]

On the scheduled hearing, Atty. Nueva manifested in open court that he was *no longer* appearing as counsel of the defendant since the latter already engaged the services of Atty. Dominador P. Calonia as new counsel. Acting on the verbal motion,

---

[2] *Rollo*, pp. 33-38.

[3] *Id.* at 48-49.

[4] *Id.* at 50-53.

[5] *Id* at 55-59.

Supreme Court E-Library

respondent judge issued an Order[6] giving the new counsel Atty. Calonia or Virgilio Balaqui a period of fifteen days to file an Opposition or Comment to the Omnibus Motion.

During pre-trial conference, however, Atty. Nueva *again* appeared as counsel for defendants. Respondent judge issued an order giving Atty. Nueva and plaintiff fifteen (15) days to file their Opposition to the Omnibus Motion and reset the pre-trial conference to March 15, 1994. On said date, plaintiff and third-party defendant duly appeared with their respective counsels. Defendants were absent. Atty. Nueva *again* verbally manifested that he was *no longer* the counsel of defendants. Upon plaintiff's motion, defendants were declared "as in default" with respect to the complaint, and "non-suited" with respect to the third party complaint.

On April 21, 1994, Requierme received a "Motion to Lift the Order of Default and Opposition to Declare Third Party Plaintiff Non-Suited" dated April 14, 1994.[7] Requierme promptly filed a Comment/Opposition[8] on the ground that the Motion to Lift was a mere scrap of paper since it did not contain a notice of hearing stating the time and place of hearing, and was not directed at the parties but the Clerk of Court.

On June 12, 1994, Requierme received a notice of pre-trial conference dated April 14, 1994, the same day the Motion to Lift was filed. During pre-trial conference, respondent judge called the counsels of the parties to her chambers. She requested the respective counsels of plaintiff and third party defendant not to oppose the Motion to Lift in order to give defendants a chance to present evidence. After the pre-trial conference, respondent judge issued an Order dated June 17, 1994[9] denying the Omnibus Motion for Dismissal

---

[6] *Id.* at 62.

[7] *Id.* at 64-65.

[8] *Id.* at 66-67.

[9] *Id.* at 70-71.

Supreme Court E-Library

or Summary Judgment, and granting the "Motion to Lift" and setting the case for trial. Upon reminder of plaintiff's counsel that no pre-trial order had been issued, respondent judge replied that she would issue the order after the presentation of the witnesses.

Trial ensued. On December 6, 1994, during presentation of defendant's evidence on the third party complaint, Atty. Nueva manifested that he was not presenting evidence. After the hearing, respondent judge, in open court, requested Atty. Carillo not to present evidence on the counterclaims and to take pity on the defendants because they had already surrendered and "were on their hands and knees." Atty. Carillo explained that his client would most likely present evidence because of the considerable expenses incurred, and the lack of initiative from defendants to amicably settle the case. Nonetheless, respondent judge requested that he advise his client not to present evidence.

On the February 8, 1995, respondent judge reiterated her request. When Atty. Carillo insisted on presenting evidence, respondent judge became unusually strict on the witness. She showed her displeasure whenever Atty. Carillo made objections, and banged her gavel and admonished him not to raise his voice.[10]

On March 24, 1995, Requierme and Atty. Carillo filed a "Motion for Disqualification/Inhibition of Presiding Judge."[11] On the date set for hearing of the inhibition motion, Requierme and Atty. Carillo failed to appear. Respondent judge gave plaintiff and defendants ten (10) days to file their comments on the motion to inhibit, and reset the hearing to May 16, 1995.[12] On said date, Requierme and Atty. Carillo appeared, only to find out that all hearings of respondent judge were cancelled, and their hearing re-scheduled to October 27, 1995.

---

[10] *Id.* at 85-93.

[11] *Id.* at 106-108.

[12] *Id.* at 110.

Supreme Court E-Library

Finally, on said date, another lawyer from the NCC firm appeared for third party defendant. Atty. Gerardo C. Nograles of NCC Law informed the court that he was taking over the case since Atty. Carillo already resigned from the firm to join Sycip, Salazar Hernandez and Gatmaitan, Davao Branch. Respondent judge however made derogatory remarks against Atty. Carillo saying that he was incompetent and irresponsible. She asked Atty. Nograles if he was standing by the motion to inhibit. Atty. Nograles replied in the affirmative. Respondent judge reset the hearing of the motion to inhibit to February 14, 1996 which was later rescheduled to November 24, 1995, specifically ordering "Atty. Carillo" to appear and prove the allegations in his motion under penalty of contempt.[13] Atty. Nograles filed a Motion for Postponement, but the hearing pushed through. Atty. Nograles further filed a Manifestation[14] that counsel for third party defendant was the NCC Law, not Atty. Carillo, who had already resigned from the firm. On November 24, 1995, plaintiff, third party defendants, and their respective counsels did not appear. Respondent judge therefore declared Atty. Carillo in direct contempt of court.[15]

On December 6, 1995 respondent judge issued an Order,[16] denying the motion for inhibition and citing Atty. Carillo for direct contempt of court and imposing upon him a fine of ₱500.00. The NCC law firm filed a motion for reconsideration[17] which was denied.[18] Hence, Atty. Carillo paid the fine under protest.[19] In the meantime, the NCC firm filed a Formal

---

[13] *Id.* at 11.

[14] *Id.* at 112.

[15] Order dated November 24, 1995, Annex "S" to the Complaint, *Rollo*, p. 114; Order dated December 6, 1995, Annex "T" to the Complaint, *Rollo*, pp. 115-117; TSN, May 10, 1996, pp. 18-20, *Rollo*, pp. 93-95.

[16] *Rollo*, pp. 115-117.

[17] *Id.* at 118-120.

[18] *Id.* at 123-24.

[19] Manifestation, *Rollo*, pp. 125-136; Order dated August 13, 1996, p. 137.

Supreme Court E-Library

Offer of Exhibits *ad cautelam*. Defendants duly filed their opposition thereto.

On October 25, 1996, Requierme and Atty. Carillo filed the present administrative case against respondent judge.[20]

In her Answer,[21] respondent judge explained that she did not impliedly accept Atty. Nueva's verbal request to withdraw as counsel, but merely ordered the new counsel to file the comment or opposition to avoid delay. She admitted that she called the pre-trial conference in chambers "for the purpose of threshing out technical matters by allowing the Balaquis (defendants) to present evidence instead of indulging in technicalities." She attributed her failure to issue a pre-trial order to her heavy caseload in two *salas*. She admitted that she suggested to Atty. Carillo not to present evidence because she wanted to be fair to the defendants who had "half-hearted assistance of counsel" and that she was "guided by a sense of justice and fairness." She denied being unusually strict against Atty. Carillo, and that she merely imposed proper decorum and courtesy in her court. She claimed that defendants were not related to her, and she does not have any interest on the litigated property. Further, the delay in ruling on the motion for inhibition was due to her heavy case load and trip to the U.S.A.. Respondent judge denied making derogatory remarks against Atty. Carillo, but admitted that she declared him in contempt of court for his failure to appear in court. Because of the administrative complaint, she opted to inhibit from further hearing the civil case.

---

[20] *Id.* at 1-32; Atty. Carillo also filed a separate complaint for damages against respondent judge on December 8, 1995, before the Regional Trial Court of Digos, Davao del Sur, Branch 19. On February 29, 2000, the Court of Appeals, Fourth Division, rendered a decision in CA-G.R. SP No. 44647 entitled *"Judge Evangeline I. Yuipco v. Hon. Hilario I. Mapayo, Presiding Judge, RTC, Br. 19, Digos, Davao del Sur and Dominador Maphilindo Carillo"* ordering public respondent to desist from further proceeding with the case and dismissing the damage suit for lack of merit.

[21] *Id.* at 143-162.

Supreme Court E-Library

Complainants duly filed their reply.[22] Both parties manifested that they were willing to submit the case on the basis of the pleadings on record.[23]

The matter was referred to the Office of the Court Administrator for evaluation, recommendation and report.

In a Memorandum[24] dated November 10, 1998, the Office of the Court Administrator (OCA) found that respondent judge acted with partiality towards defendants on two occasions — when she called a second pre-trial conference to request counsels for plaintiff and third party defendants not to oppose the Motion to Lift and when she told Atty. Carillo not to present evidence on the counterclaims. The OCA found that respondent judge disregarded procedural rules when she entertained the Motion to Lift which did not contain a proper notice of hearing addressed to the parties, and when she allowed the verbal substitution of counsels for defendants. As to the contempt order, the OCA found it improper for lack of basis and for being excessive compared to the amount allowed under the Rule 71 of the Rules of Court.[25] Hence, the OCA recommended that the respondent judge be found guilty of serious misconduct and evident partiality and be fined Ten Thousand (₱10,000.00) Pesos with a stern warning that a repetition of the same or similar act or acts in the future will be dealt with more severely.

Based on the records and evidence presented, we find that respondent judge committed the following irregularities:

First. A verbal substitution of counsel, albeit impliedly granted by respondent judge, contravenes Section 26 of Rule 138 of the Rules of Court which prescribes the requirements for change of attorneys. Said provision requires that the written consent

---

[22] *Id.* at 177-196.

[23] *Id.* at 211-213.

[24] *Id.* at 197-206.

[25] Rule 71 was later amended by Circular No. 22-95 which took effect only on November 16, 1995.

Supreme Court E-Library

of the client should be filed in court and the adverse party should be given written notice of the substitution. As correctly pointed out by the OCA, if her intention was to obviate delay, then she should have ordered the counsel of record, Atty. Nueva, who was present during the hearing, to file the required comment or opposition.

Second. The Motion to Lift failed to comply with Sections 4, 5 and 6 of Rule 15 of the Rules of Court,[26] which requires notice to be sent at least three days before the hearing, directed to the parties concerned, stating the time and place of hearing of the motion, with proper proof of notice thereof. For failure to comply with said requirements, the Motion to Lift was a mere scrap of paper,[27] and respondent judge erred in taking cognizance thereof. The failure of respondent judge to attach importance to the standard and fundamental procedure mandated by the Rules of Court renders her administratively liable.[28]

Third. Respondent judge showed partiality when she called counsels for plaintiff and third party defendants to her chambers during a pre-trial conference and requested them not to oppose the Motion to Lift. Canon 3, Rule 3.06 provides that "[w]hile a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during trial, it should always be borne in mind that undue influence may prevent the proper presentation of the cause or the ascertainment of truth." In intervening on behalf of the defendants, respondent judge failed to live to the mandate that a judge should not only be impartial but must also appear impartial. A judge must behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[29] We have repeatedly stressed that "[a] judge should be the embodiment of competence, integrity and independence,[30] and should administer justice impartially and

---

[26] Now Secs. 4, 5, and 6 of Rule 15 of the Revised Rules of Civil Procedure.

[27] *Tan v. Court of Appeals*, 295 SCRA 755, 761-765 (1998).

[28] *Cui v. Madayag*, 245 SCRA 1, 10 (1995).

[29] Canon 2, Rule 2.01, Code of Judicial Conduct.

[30] Canon 1, Rule 1.01, Code of Judicial Conduct.

Supreme Court E-Library

without delay.[31] While a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of truth.[32]

Fourth. The failure to issue a pre-trial order as required by Section 14 of Rule 20 of the Rules of Court[33] cannot be excused by her heavy caseload. It was likewise unthinkable for respondent judge to contend that complainants failed to remind her to issue said order, for it is not their duty, but hers, to issue a pre-trial order.

Lastly, there is no legal basis for holding Atty. Carillo guilty of direct contempt for not appearing during a hearing considering that respondent judge was fully apprised that he was no longer the counsel of third party defendant. While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and uphold the due respect for the administration of justice, judges should however exercise their contempt powers judiciously and sparingly, with the end in view of utilizing their contempt powers for correction and preservation, not for retaliation or vindication.[34]

Judges are called to exhibit more than just a cursory acquaintance with statutes and procedural laws. They are not common men and women, whose errors men forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed.[35]

WHEREFORE, Judge Evangeline S. Yuipco of the Regional Trial Court of Prosperidad, Agusan del Sur, Branch 6, is found

---

[31] Canon 1, Rule 1.02, Code of Judicial Conduct.

[32] Canon 3, Rule 3.06, Code of Judicial Conduct.

[33] Now Sec. 7 of Rule 18 of the Rules of Court.

[34] *Cortes v. Bangalan*, Adm. Matter No. MTJ-97-1129, January 19, 2000, p. 5.

[35] *Office of the Court Administrator v. Bartolome*, 203 SCRA 328, 337.

Supreme Court E-Library

liable for serious misconduct, *i.e.*, acting with manifest partiality toward the defendants in a case, and hereby *ORDERED* to pay a *FINE* of FIVE THOUSAND (₱5,000.00) PESOS, with a warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 114942. November 27, 2000]

MAUNLAD SAVINGS & LOAN ASSOCIATION, INC., *petitioner, vs.* **THE HON. COURT OF APPEALS and VICTOR T. NUBLA,** *respondents.*

SYNOPSIS

Petitioner Maunlad Savings instituted a complaint for sum of money against private respondent Victor T. Nubla and Vicente Nubla on the basis of a promissory note allegedly executed by the Nublas to secure a loan amounting to ₱700,000.00 which, upon maturity and despite repeated demands, the Nublas failed to pay. At the trial, private respondent Victor T. Nubla testified that the loan documents and the promissory note did not embody the real agreement of the parties because they signed blank documents on the understanding that they were signing as representatives of Ever-Rise, and not in their personal capacity. The Nublas filed their Formal Offer of Documentary Exhibits. The petitioner, subsequently filed its objections to the offer of documentary exhibits which the trial court admitted notwithstanding the objections thereto of petitioner. The Nublas filed a Motion to Admit Amended Answer seeking to introduce