SECOND DIVISION

[A.M. No. RTJ-18-2527 (Formerly OCA IPI No. 16-4563-RTJ), June 18, 2018]

ATTY. MAKILITO B. MAHINAY, COMPLAINANT, V. HON. RAMON B. DAOMILAS, JR., PRESIDING JUDGE, AND ATTY. ROSADEY E. FAELNAR-BINONGO, CLERK OF COURT V, BOTH OF BRANCH 11, REGIONAL TRIAL COURT, CEBU CITY, CEBU, RESPONDENTS.

D E C I S I O N

CAGUIOA, J:

Before the Court is the Complaint[1] dated April 18, 2016 filed before the Office of the Court Administrator (OCA) by Atty. Makilito B. Mahinay against respondent Hon. Ramon B. Daomilas, Jr., Presiding Judge, and Atty. Rosadey E. Faelnar-Binongo, Clerk of Court V, both of Branch 11, Regional Trial Court (RTC), Cebu City, Cebu.

Antecedents

Atty. Mahinay charged respondent Judge Daomilas, Jr. and Atty. Faelnar-Binongo with gross inexcusable negligence and gross ignorance of the law relative to SRC Case No. SRC-223-CEB entitled *PJH Lending Corporation, Bernard R. Twitchett, Rosalie Canlom Farley and Canuto T. Barte, Jr. vs. Wilma L. Zamora, Ian Paul Z. Estremos, Mark Lester Z. Estremos, Fritz Sembrino, Roselo M. Alfar and the Securities and Exchange Commission, Regional Office, Cebu City* (SRC-223-CEB), wherein Atty. Mahinay is the counsel of the plaintiffs in the case.

The plaintiffs in SRC-223-CEB filed their complaint for Judicial Declaration of Nullity of Shareholdings with Prayer for Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order[2] on December 19, 2012. The subject case was raffled to RTC Branch 11, presided by respondent Judge Daomilas, Jr.

Atty. Mahinay alleged that respondent Judge Daomilas, Jr. violated the Interim Rules of Procedure for Intra-Corporate Controversies when he failed to act on the Prayer for TRO and/or a Writ of Preliminary Injunction despite the lapse of more than two (2) years from the date the matter was submitted for resolution sometime in March 2013,[3] as well as the repeated motions filed for the early resolution thereof.

On November 3, 2015, Atty. Mahinay wrote the OCA for assistance in the early disposition of the pending prayer for TRO in the subject case due to the protracted inaction of respondent Judge Daomilas, Jr.[4] On November 6, 2015, respondent Judge Daomilas, Jr. issued an Order[5] granting plaintiffs' prayer for a Writ of Preliminary Injunction conditioned upon plaintiffs' posting of a bond in the amount of Ten Million Eight Hundred Seventy-Four Thousand Nine Hundred Ninety-Two Pesos (P10,874,992.00), to enjoin the defendants from interfering with the management of the PJH Lending Corporation. In a Motion[6] dated November 12, 2015, the defendants sought reconsideration of the November 6, 2015 Order and prayed that

they be allowed to post a counter-bond. The motion was set for hearing the next day or on November 13, 2015.

Defendants thereafter filed a Manifestation,[7] reporting on the misrepresentations made by plaintiff regarding the status of SRC Case No. SRC-223-CEB. The plaintiffs sent letters to the managers of the depositary banks of the PJH Lending Corporation, informing them that the defendants already lost in SRC-223-CEB and that they should refrain from transacting with the defendants.[8]

On November 16, 2015, the plaintiffs posted Surety Bond No. 00117 issued by Liberty Insurance Corporation for the issuance of a writ of preliminary injunction. In an Order[9] issued on the same day, respondent Judge Daomilas, Jr. directed the plaintiffs to comment on defendants' Motion for Reconsideration, with an Urgent Prayer to Post a Counter-bond.[10] Plaintiffs filed their Manifestation and Compliance[11] dated November 17, 2015 in compliance thereof.

On January 18, 2016, Atty. Mahinay wrote the OCA again, reporting that respondent Judge Daomilas, Jr. dilly-dallied in issuing the writ of preliminary injunction in favor of his clients despite the latter's November 6, 2015 Order.[12] He asked that a new judge be designated to issue the writ of preliminary injunction in SRC Case No. SRC-223-CEB. Before the OCA responded to Atty. Mahinay's January 18, 2016 Letter, respondent Judge Daomilas, Jr. issued an Order[13] dated January 20, 2016, the *fallo* of which reads:

> Wherefore, the Motion for Reconsideration is hereby DENIED but the Motion to File Counter[-]bond is hereby GRANTED. Defendants are directed to file their counter-bond in [an] amount equal to the injunction bond (P10,874,992.00) previously filed by the plaintiffs. This counter-bond shall answer for whatever damages the plaintiffs may suffer.
>
> **SO ORDERED.**[14] (Emphasis in the original)

Plaintiffs filed a *Motion to Recall and/or Expunge from the Records the Order dated January 20, 2016*,[15] but the same was subsequently withdrawn because the plaintiffs manifested that they intend to file a petition for mandamus and certiorari before the Court of Appeals (Cebu Station) to compel respondent Judge Daomilas, Jr. to enforce the November 6, 2015 Order and set aside the January 20, 2016 Order.[16]

Atty. Mahinay also accused respondent Clerk of Court Faelnar-Binongo of malfeasance in the performance of her functions. He averred that Clerk of Court Faelnar-Binongo colluded with respondent Judge Daomilas, Jr. in delaying the issuance of the writ of preliminary injunction by allowing the filing of the defendants' Motion for Reconsideration, knowing that the same is a prohibited pleading.

In a 1st Indorsement[17] dated May 19, 2016, the OCA directed respondents Judge Daomilas, Jr. and Clerk of Court Faelnar-Binongo to file their respective Comments within ten (10) days from receipt thereof.[18]

In his Comment[19] dated July 7, 2016, respondent Judge Daomilas, Jr. denied that he delayed the resolution of plaintiffs' prayer for TRO and the Writ of Preliminary Injunction. Respondent Judge Daomilas, Jr. admitted that with cases heard in the

morning and the afternoon, he had only very limited time to study and evaluate motions and cases for decision.[20] Respondent Judge Daomilas, Jr. explained that concurrent to his regular branch, he was previously assigned to the RTC in Toledo City, in Lapu Lapu City and in Mandaue City.[21] He took the responsibility inspite of the fact that his branch (RTC, Branch 11, Cebu City) had a very limited support staff to help him since said court lacks a legal researcher, two (2) stenographers and a docket clerk.[22] Respondent Judge Daomilas, Jr. averred that he was doing everything within his means and authority to perform his judicial functions to the best of his abilities despite his heavy caseload, coupled with the fact that he was recently designated as Assisting Judge in Branch 55, RTC, Mandaue City, Cebu.[23]

Respondent Judge Daomilas, Jr. asserted that he issued the January 20, 2016 Order allowing the defendants to post a counter-bond because the posting of a counter-bond is allowed under Rule 58[24] of the Rules of Court and the same is not barred under the Interim Rules. Respondent Judge Daomilas, Jr. averred that Order dated January 20, 2016 was not issued to frustrate the legal effect of the November 6, 2015 Order, which granted the motion for the issuance of the Writ of Preliminary Injunction, but to address the confusion brought about by plaintiffs' misrepresentations with respect to the status of the case.[25]

With respect to the early setting for hearing of the defendants' Motion for Reconsideration, respondent Judge Daomilas, Jr. alleged that the Rules allow a motion to be set for hearing earlier than the three (3) day notice for good cause. Respondent Judge Daomilas, Jr. averred that he found the urgent prayer to post a counter-bond filed by the defendants as a "*good cause*"[26] to set the motion for hearing immediately. Furthermore, respondent Judge Daomilas, Jr. was informed by respondent Clerk of Court Faelnar-Binongo that the parties were already notified of the schedule of hearing of the said Motion.[27]

Anent his alleged failure to act on the *Motion to Recall and/or Expunge from the Records the Order dated January 20, 2016*, respondent Judge Daomilas, Jr. argued that he was prevented from taking action thereon because the plaintiffs manifested their intent to withdraw the same to give way to the petition for mandamus and certiorari that they filed before the Court of Appeals.[28]

In his Comment[29] dated July 1, 2016, respondent Clerk of Court Faelnar-Binongo denied colluding with respondent Judge Daomilas, Jr. on the alleged delay in the resolution of the incidents in the subject case. She averred that as clerk of court, it is her ministerial duty to receive pleadings, motions and other court papers for the consideration of the court. She emphasized that she had no discretion to decide whether a pleading filed is prohibited under the rules because such determination is a judicial function that belongs to the judge.

On the alleged haste in the setting of the hearing for the defendants' motion for reconsideration, respondent Clerk of Court Faelnar-Binongo averred that Section 4,[30] Rule 15 of the Rules of Court allow a shorter period of giving notice of hearing to the parties "*for a good cause*." She alleged that plaintiffs and Atty. Mahinay already received a copy of the defendants' motion for reconsideration when the same was filed before the court on November 12, 2015. Respondent Clerk of Court Faelnar-Binongo alleged that Atty. Mahinay is known for his propensity to file baseless administrative cases against lawyers and judges who offend him.[31]

Atty. Mahinay emphasized in his Reply[32] dated July 20, 2016 that respondent Judge Daomilas, Jr. did not refute the allegation that there was a delay of two (2) years and eight (8) months in the issuance of the injunctive writ prayed for by the plaintiffs. In addition, Atty. Mahinay also accused respondent Judge Daomilas, Jr. of not acting promptly on their Motion for Summary Judgment in related cases, docketed as SCR Case Nos. 206 and 207, which is a violation of the mandate of the Interim Rules to promote the objective of securing a just, summary, speedy and inexpensive determination of the action or proceeding.[33]

Finally, Atty. Mahinay reiterated that respondent Judge Daomilas, Jr. grossly erred when he entertained the defendants' Motion for Reconsideration. According to him, it does not matter whether the said motion was accompanied with an urgent prayer to post a counter-bond as no Writ of Preliminary Injunction was yet issued by the trial court; and that an offer of a counter-bond does not suffice to dissolve the writ of preliminary injunction. Atty. Mahinay further claimed that respondent Judge Daomilas, Jr. could not vary or modify his November 6, 2015 Order because the same already became *ipso facto* final and executory, pursuant to Section 4,[34] Rule 1 of the Interim Rules.

OCA Report and Recommendation

In a Memorandum[35] dated February 12, 2018, the OCA recommended that respondent Judge Daomilas, Jr. be found guilty of Undue Delay in Rendering an Order.

The OCA ratiocinated as follows:

> x x x The records show that he issued the Order dated 6 November 2015 which granted the writ in favor of the plaintiffs more than two years after the matter was deemed submitted for resolution sometime in March 2013 and despite the repeated demands for its early resolution. He did not refute this fact in his comment. And, it appears that respondent Judge Daomilas, Jr. would not have issued the order if complainant Atty. Mahinay had not written a letter dated 3 November 2015, informing this Office about the undue delay in the resolution of his application for a writ of preliminary injunction.

> Indubitably, the Order dated 6 November 2015 was rendered beyond the mandatory ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2), Article 8 of the 1987 Constitution. The delay could have been addressed if only respondent Judge Daomilas, Jr. had filed a written motion for an extension of time to resolve the pending matter, citing his heavy workload and additional responsibility as an assisting judge of Branch 55, RTC, Mandaue City, Cebu, but he failed to do so. It cannot be gainsaid that delay in resolving motions and incidents pending before a judge within the reglementary period fixed by the Constitution and the law is inexcusable and cannot be condoned.[36]

The OCA however recommended that the penalty to be imposed on respondent Judge Daomilas, Jr. be reduced to a reprimand, taking into account his unusually heavy caseload. Apart from his regular functions as Presiding Judge of Branch 11,

RTC, Cebu City, Cebu, he was also the Acting Presiding Judge of Branch 55, RTC, Mandaue City from 2012 to 2014, and was saddled with heavy caseload of 3,121 as of December 2014.[37]

As to the administrative charges of inefficiency and collusion against respondent Clerk of Court Faelnar-Binongo, the OCA recommended that the same be dismissed for lack of merit. The OCA explained that she had no discretion to refuse to receive the said motion outright even if the same is contrary to law or non-compliant with the rules as the same constitutes a judicial function that belongs to the judge.[38]

The Court's Ruling

In view of the foregoing, the Court agrees with the findings of the OCA, subject to modification as to the penalty.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. [39] A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[40]

The Court however has also ruled that "*not every error or mistake of a judge in the performance of his official duties renders him liable*."[41]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. [42]

Atty. Mahinay questions the propriety of the following acts taken by respondent Judge Daomilas, Jr. in SRC Case No. SRC-233-CEB, to wit: (1) issuing the January 20, 2016 Order, allowing the defendants to post a counter-bond; (2) not issuing a writ of preliminary injunction in favor of the plaintiffs, which allegedly defeated the purpose of the November 6, 2015 Order; and (3) allowing the defendants to file a motion for reconsideration and setting the same for hearing on a shorter notice.[43]

The Court agrees with the OCA that these matters are judicial in nature, the determination of which are beyond the ambit of an administrative proceeding as it will involve the evaluation of factual matters and the interpretation of applicable laws.

Assuming *arguendo* that respondent Judge Daomilas, Jr. erred in his actions in the subject case, the same does not necessarily render him administratively liable. The Court has invariably ruled that the errors attributed to judges pertaining to the exercise of their adjudicative functions should be assailed in judicial proceedings instead of in an administrative case.[44] Consistent with the Court's policy, a judge cannot be subjected to any liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty and corruption, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned.[45]