

## FIRST DIVISION

**[ A.M. No. RTJ-08-2102 (Formerly A.M. OCA IPI No. 07-2762-RTJ), October 14, 2015 ]**

**SUGNI REALTY HOLDINGS AND DEVELOPMENT CORPORATION, REPRESENTED BY ITS CHAIRMAN/PRESIDENT, CYNTHIA CRUZ KHEMANI, COMPLAINANT, VS. JUDGE BERNADETTE S. PAREDES-ENCINAREAL, [THEN IN HER CAPACITY AS ACTING PRESIDING JUDGE, BRANCH 10, REGIONAL TRIAL COURT, IN DIPOLOG CITY], PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 12, OROQUIETA CITY, RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

This administrative case relates to the action of an appellate judge on the plaintiffs motion for immediate execution filed in an ejectment case. Our disposition herein should remind all trial and appellate judges dealing with ejectment cases about their responsibilities and limitations in acting on the motions for immediate execution of the judgments.

The complainant, represented by its chairman and president, has charged respondent Judge Bernadette S. Paredes-Encinareal, in her capacity as the Acting Presiding Judge of Branch 10 of the Regional Trial Court (RTC) in Dipolog City (respondent Judge) with gross ignorance of the law or procedure, bias, and prejudice<sup>[1]</sup> for issuing two orders during the appeal of the decision rendered in its favor as the plaintiff in an ejectment case in contravention of the rule on staying the immediate execution of the judgment<sup>[2]</sup> and in disregard of the guidelines on the conduct of the proceedings by detailed judges. By her first order, dated September 26, 2005,<sup>[3]</sup> respondent Judge extended the defendants' periods for posting the supersedeas bond and for paying or depositing the monthly rentals despite her lack of authority for doing so. Respondent Judge issued the second order, dated November 8, 2005,<sup>[4]</sup> despite her having meanwhile been relieved as the Acting Presiding Judge of the issuing court.

The complainant has further charged respondent Judge with bribery for having received large sums of money from one Peter Tan on two occasions prior to issuing the orders in question.<sup>[5]</sup>

### Antecedents

On September 25, 2001, the complainant instituted the action for unlawful detainer against Spouses Rally and Noemi Falame in the Municipal Trial Court in Cities (MTCC), Branch 2, of Dipolog City. On January 15, 2005, the MTCC rendered its decision in favor of the complainant, which promptly filed a *Motion for Execution*

*Pending Appeal*. However, the MTCC did not resolve the *Motion for Execution Pending Appeal*, and instead elevated the records to the RTC in Dipolog City in view of the Falames' filing of their *Notice of Appeal*. In the RTC, the appeal was assigned to Branch 10, where respondent Judge was the Acting Presiding Judge.<sup>[6]</sup>

On August 19, 2005, the complainant filed an *Urgent Motion to Dismiss Appeal*, averring as grounds for dismissal the Falames' failure to post the *supersedeas* bond, and to deposit the monthly rental of P350,000.00.<sup>[7]</sup> According to the complainant, however, respondent Judge did not resolve its *Urgent Motion to Dismiss Appeal* but instead issued the order dated September 26, 2005, quoted as follows:

To stay execution of judgment pending appeal, the defendants-appellants may post supersedeas bond within 20 days from the receipt of the copy of this order, in the aggregate amount of THREE HUNDRED FIFTY THOUSAND (P350,000.00) PESOS per month beginning October 2, 2000 up to this date. The amount fixed is pursuant to the decision rendered by the court a quo in paragraph 2 of the dispositive portion (sic).

Further pending appeal, the same monthly amount shall be deposited periodically as it falls due every month with the RTC Clerk of Court of Dipolog City.<sup>[8]</sup>

On October 28, 2005, the complainant, undaunted, filed an *Urgent Motion To Resolve and Grant Immediately*,<sup>[9]</sup> whereby it reminded respondent Judge to resolve the previous motions. Ignoring the reminder, respondent Judge issued the order of November 8, 2005 whereby she denied the complainant's *Urgent Motion to Dismiss Appeal*, stating:

This is acting on the Motion to Dismiss filed by the plaintiffs on the ground that defendants-appellants have not filed a supersedeas bond with opposition thereto by the defendants that the motion to dismiss had no proof of service. In open court, however a copy of said motion to dismiss was tendered to the defendants' counsel. Plaintiffs argued in their motion to dismiss citing Sec. 19, Rule 70 of the Revised Rules of Court the immediate execution of the judgment. Attached to the record on appeal is Plaintiffs Motion for Execution addressed to the MTCC, Branch 2, Dipolog City which was not for this court to resolve. Eventually a Motion for Writ of Execution was filed with this court. In the court's Order dated September 26, 2005, the defendants-appellants were directed to post a supersedeas bond within a period of 20 days from receipt of the order in the amount of THREE HUNDRED FIFTY THOUSAND (P350,000.00) PESOS per month beginning October 2, 2000 up to this time to stay the execution of judgment. The undersigned acting presiding judge had already ceased to hold the position when on October 6, 2005 she received through FAX the order revoking her designation as acting presiding judge of RTC Branch 10, Dipolog City.

WFIEREFORE, premises considered, the Motion to Dismiss filed by the plaintiff is hereby denied.<sup>[10]</sup>

The complainant insists that the order of November 8, 2005 was null and void because respondent Judge had by then been relieved as the Acting Presiding Judge of the issuing court.<sup>[11]</sup>

In her comment,<sup>[12]</sup> respondent Judge explained that she did not resolve the complainant's Motion for Execution Pending Appeal because the motion was addressed to and filed in the MTCC; that belying the allegation of delay, she stressed that she gave to the Falames five days within which to comment on the *Motion for Execution Pending Appeal* in view of the motion having been filed in the MTCC; that she was on vacation in the period from March 31, 2005 to May 3, 2005; that she ultimately denied the motion on May 27, 2005; and that on June 21, 2005, the complainant filed its *Motion for Execution Pending Appeal* in the RTC, and set the hearing of the motion on July 4, 5, or 6, at 8:30 in the morning.<sup>[13]</sup>

The complainant later on submitted its *Manifestation* requesting the simultaneous hearing on July 18, 2005 of its *Motion for Execution Pending Appeal and Motion to Suspend Proceedings*. However, respondent Judge cancelled all hearings scheduled on July 18, 2005 in order to observe and celebrate Law Day as directed by the Supreme Court.<sup>[14]</sup> It was shown that she was to lead the Law Day festivities.

On August 30, 2005, the complainant presented an *Urgent Motion to Dismiss Appeal*<sup>[15]</sup> a copy of which the counsel for the Falames denied having received during the scheduled hearing. Accordingly, said counsel was allowed 10 days to file their opposition.<sup>[16]</sup> The complainant's motions were later resolved through the order of September 26, 2005.<sup>[17]</sup>

On October 6, 2005, respondent Judge received from the Court via fax a copy of Administrative Order 159-2005 dated October 3, 2005 revoking her designation as the Acting Presiding Judge of Branch 10 of the RTC.

Regarding the order of November 8, 2005, respondent Judge clarified in her comment dated January 12, 2007,<sup>[18]</sup> as follows:

While it is true that an Order was issued by the Respondent dated November 8, 2005 after she was relieved as Acting Presiding Judge on October 6, 2005 denying the Urgent Motion to Dismiss Appeal filed by Plaintiff-Appellee, but the same case on appeal was already decided by the lower Court and both parties have finished presenting their respective evidence in a Summary Procedure. The said Motion was heard on September 5, 2006, where after the arguments of the respective counsels of the parties, the Court issued an Order for the Defendants-Appellants to file their Opposition without extension of time after which the Motion shall be resolved (sic) by the Court. The Defendants-Appellants complied with the order of the court when it filed their opposition to the Urgent Motion to Dismiss Appeal on September 12, 2005. The Motion, as it was URGENT, and the outcome being in the nature of disposal, if granted, was treated by the Respondent.<sup>[19]</sup>

Respondent Judge argued that she had the authority under item 2 of A.M. No. 04-5-19-SC to still issue the order of November 8, 2005, viz.:

Except as herein provided, all cases shall remain in the branch to which these have been raffled and assigned. Only cases that have been submitted for decision or those past the trial stage, *i.e.* where all the parties have finished presenting their evidence, prior to the transfer or promotion to the judge to which these are raffled/assigned shall be resolved or disposed by him/her in accordance with the guidelines herein set forth.<sup>[20]</sup>

Respondent Judge posited that the charges of corruption, bias, and partiality against her were frivolous, despicable and allegations without proof. She observed that if she had really received P21,700,000.00 from one Peter Tan, she would not have borrowed P200,000.00 in February 2006 from the Supreme Court Savings and Loan Association (SCSLA), and P149,000.00 in October 2006 from the Rural Bank of Rizal in Calamba, Misamis Occidental.<sup>[21]</sup>

In the reply filed on March 9, 2007,<sup>[22]</sup> the complainant indicated that it did not mention the amount of bribe in its complaint; that it was respondent Judge who mentioned the amount of P21,700,000.00 in her comment; that her alleged borrowings were a cover-up in anticipation of the administrative complaint; that it was no coincidence that the total borrowings from SCSLA and the rural bank equaled the P350,000.00 awarded as the monthly rentals; and that her reliance on item 2 of A.M. No. 04-5-19-SC to support her issuance of the order of November 8, 2005 was erroneous because the guidelines contained in items 5 and 6 of A.M. No. 04-5-19-SC did not sanction such issuance.<sup>[23]</sup>

On November 28, 2007, the Office of the Court Administrator recommended the case to be re-docketed as a regular administrative matter, and to refer the case to any of the Justices of the Court of Appeals (CA) in the Cagayan de Oro City Station for investigation, report and recommendation.<sup>[24]</sup>

### **Report of the Investigating Justice**

The case was assigned to Associate Justice Edgardo T. Lloren of the CA in the Cagayan de Oro Station. He scheduled hearings on May 7 and 8, 2008, both at 9:00 am, and directed the complainant to submit the testimonies of its witnesses in affidavit form.<sup>[25]</sup> At the scheduled hearings, however, only respondent Judge and her counsel appeared, prompting her to move to dismiss the case subject to her submitting the written motion for that purpose at a later time. On May 13, 2008, she filed her *Motion to Dismiss*,<sup>[26]</sup> wherein she restated the arguments contained in her comment, and added that the complainant, by not appearing at the hearings, failed to substantiate its charges against her.

Justice Lloren subsequently discovered that the order of April 3, 2008 setting the hearings on May 7 and 8, 2008 had not been properly sent to the complainant, which learned of the hearings only upon receiving respondent Judge's *Motion to*

*Dismiss*. On May 21, 2008, therefore, the complainant immediately submitted its opposition to the *Motion to Dismiss*,<sup>[27]</sup> stating therein that it had not received a copy of the order setting the hearings. Accordingly, Justice Lloren set other hearings on June 17-19, 2008.<sup>[28]</sup>

The parties and their respective counsel later appeared at the hearings but the complainant's lone witness did not appear despite being served with the *subpoena ad testificandum*.<sup>[29]</sup> Justice Lloren granted the complainant another chance to present the witness on July 1, 2008, with the instruction to promptly give notice should the appearance of the witness not be ensured.<sup>[30]</sup> The complainant soon manifested to Justice Lloren the futility of its diligent efforts to locate its witness.<sup>[31]</sup> With that, the July 1, 2008 hearing was cancelled, and the parties proceeded to submit their respective memoranda. The respondent submitted her memorandum on July 3, 2008,<sup>[32]</sup> while the complainant, after submitting its *Written Offer of Additional Evidence* on July 16, 2008,<sup>[33]</sup> sent in its memorandum on July 18, 2008.<sup>[34]</sup>

On July 24, 2008, this Court received from Justice Lloren the entire records of the case,<sup>[35]</sup> including his undated report,<sup>[36]</sup> whereby he recommended as follows:

**WHEREFORE**, in view of the foregoing, it is respectfully recommended that:

- 1) respondent be found guilty of violation of Supreme Court circular A.M. No. 04-5-19-SC for the issuance of the November 8, 2005 Order and be imposed a fine of P11,000.00;
- 2) the charge of gross ignorance of the law for the issuance of the September 26, 2005 Order be dismissed for lack of merit; and
- 3) the charge of corruption, bias, and partiality be likewise dismissed for insufficiency of evidence.<sup>[37]</sup>

### **Ruling of the Court**

We **AFFIRM** the findings of Justice Lloren on the matter of the order of September 26, 2005, but differ from his conclusion about the order of November 8, 2005.

We further **AFFIRM** the recommendations to dismiss the charge of unreasonable delay for being unfounded; and the charge of corruption, bias and prejudice for lack of evidence.

### **I**

**In issuing the order of September 26, 2005,  
respondent Judge disregarded the**