

SECOND DIVISION

[G.R. No. 207412, August 07, 2013]

**FLORD NICSON CALAWAG, PETITIONER, VS. UNIVERSITY OF
THE PHILIPPINES VISAYAS AND DEAN CARLOS C. BAYLON,
RESPONDENTS.**

[G.R. No. 207542]

**MICAH P. ESPIA, JOSE MARIE F. NASALGA AND CHE CHE B.
SALCEPUEDES, PETITIONERS, VS. DR. CARLOS C. BA YLON, DR.
MINDA J. FORMACI ON AND DR. EMERLINDA ROMAN (TO BE
SUBSTITUTED BY ALFREDO E. PASCUAL, BEING THE NEW UP
PRESIDENT), UNIVERSITY OF THE PHILIPPINES BOARD OF
REGENTS, RESPONDENTS.**

RESOLUTION

BRION, J.:

This case involves the consolidated petitions of petitioner Flord Nicson Calawag in G.R. No. 207412 and petitioners Micah P. Espia, Jose Marie F. Nasalga and Che Che B. Salcepuedes in G.R. No. 207542 (*hereinafter collectively known as petitioners*), both assailing the decision^[1] dated August 9, 2012 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 05079. The CA annulled the Order^[2] of the Regional Trial Court (RTC) of Guimbal, Iloilo, Branch 67, granting a writ of preliminary mandatory injunction against respondent Dean Carlos Baylon of the University of the Philippines Visayas (*UP Visayas*).

The petitioners enrolled in the Master of Science in Fisheries Biology at UP Visayas under a scholarship from the Department of Science and Technology-Philippine Council for Aquatic and Marine Research and Development. They finished their first year of study with good grades, and thus were eligible to start their thesis in the first semester of their second year. The petitioners then enrolled in the thesis program, drafted their tentative thesis titles, and obtained the consent of Dr. Rex Baleña to be their thesis adviser, as well as the other faculty members' consent to constitute their respective thesis committees. These details were enclosed in the letters the petitioners sent to Dean Baylon, asking him to approve the composition of their thesis committees. The letter contained the thesis committee members and the thesis adviser's approval of their titles, as well as the approval of Professor Roman Sanares, the director of the Institute of Marine Fisheries and Oceanology.

Upon receipt of the petitioners' letters, Dean Baylon wrote a series of memos addressed to Professor Sanares, questioning the propriety of the thesis topics with the college's graduate degree program. He subsequently disapproved the composition of the petitioners' thesis committees and their tentative thesis topics. According to Dean Baylon, the petitioners' thesis titles connote a historical and

social dimension study which is not appropriate for the petitioners' chosen master's degrees. Dean Baylon thereafter ordered the petitioners to submit a two-page proposal containing an outline of their tentative thesis titles, and informed them that he is forming an ad hoc committee that would take over the role of the adviser and of the thesis committees.

The petitioners thus filed a petition for *certiorari* and mandamus before the RTC, asking it to order Dean Baylon to approve and constitute the petitioners' thesis committees and approve their thesis titles. They also asked that the RTC issue a writ of preliminary mandatory injunction against Dean Baylon, and order him to perform such acts while the suit was pending.

The RTC granted a writ of preliminary mandatory injunction, which Dean Baylon allegedly refused to follow. UP Visayas eventually assailed this order before the CA through a Rule 65 petition for *certiorari*, with prayer for a temporary restraining order (TRO).

The CA's Ruling

The CA issued a TRO against the implementation of the RTC's order, holding that the petitioners had no clear right to compel Dean Baylon to approve the composition of their thesis committees as a matter of course. As the college dean, Dean Baylon exercises supervisory authority in all academic matters affecting the college. According to the CA, the petitioners' reliance on Article 51 of the Graduate Program Manual of UP Visayas is misplaced. Article 51 provides:

Art. 51. The composition of the thesis committee shall be approved by the dean of the college/school upon the recommendation of the chairperson of the major department/division/institute. The GPO shall be informed of the composition of the thesis committee and/or any change thereof.^[3]

Despite the mandatory language provided for composing the thesis committee under Article 51 of the Graduate Program Manual of UP Visayas, the CA construed it to mean that the Dean's approval is necessary prior to the composition of a thesis committee.

Lastly, the CA held that the case presents issues that are purely academic in character, which are outside the court's jurisdiction. It also noted that Dean Baylon has been accommodating of the petitioners, and that the requirements he imposed were meant to assist them to formulate a proper thesis title and graduate on time.

The Petitions for Review on Certiorari

In G.R. No. 207412, Calawag argues that the CA's decision should be set aside for the following reasons:

First, Calawag was entitled to the injunction prayed for, as he has clear rights under the law which were violated by Dean Baylon's actions. These are the right to education, the right to due process, and the right to equal protection under the law. According to Calawag, Dean Baylon violated his right to due process when he added to and changed the requirements for the constitution of his thesis committee,

without prior publication of the change in rules. Calawag's right to equal protection of the law, on the other hand, was allegedly violated because only students like him, who chose Dr. Baleña for their thesis adviser, were subjected to the additional requirements imposed by the dean, while the other students' thesis committees were formed without these impositions. Hence, Calawag and the three other petitioners in G.R. No. 207542 were unduly discriminated against.

Second, a reading of Executive Order No. 628, s. 1980,^[4] and Republic Act No. 9500^[5] shows that the college dean's functions are merely administrative, and, hence, the CA erred in its construction of Article 51 of the Graduate Program Manual of UP Visayas, as well as its proclamation that the college dean has supervisory authority over academic matters in the college.

On the other hand, in G.R. No. 207542, petitioners Espia, Nasalga and Salcepuedes argue that the CA's decision should be set aside for the following reasons:

First, the Graduate Program Manual of UP Visayas and the Guidelines for the Master of Science in Fisheries Program are clear in providing that Dean Baylon has a formal duty to approve the composition of the petitioners' thesis committees upon the latter's compliance with several requirements. Thus, when the petitioners complied with these requirements and Dean Baylon still refused to approve the composition of their thesis committees, the petitioners had a right to have him compelled to perform his duty.

Second, Dean Baylon cannot arbitrarily change and alter the manual and the guidelines, and cannot use academic freedom as subterfuge for not performing his duties.

Third, the thesis adviser and the thesis committees, in consultations with the students, have the right to choose the thesis topics, and not the dean.

The Court's Ruling

Having reviewed the arguments presented by the petitioners and the records they have attached to the petitions, we find that the CA did not commit an error in judgment in setting aside the preliminary mandatory injunction that the RTC issued against Dean Baylon. Thus, there could be no basis for the Court's exercise of its discretionary power to review the CA's decision.

"To be entitled to a writ of preliminary injunction, x x x the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction [presents a fourth requirement: it] is justified only in a clear case, free from doubt or dispute. When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper."^[6]