

EN BANC

[A.M. No. CA-08-45-J (Formerly OCA IPI No. 08-130-CA-J), February 22, 2010]

**ATTY. DENNIS V. NIÑO, COMPLAINANT, VS. JUSTICE
NORMANDIE B. PIZARRO, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

For resolution is the administrative complaint charging respondent Court of Appeals Associate Justice Normandie B. Pizarro with gross ignorance of the law, rendering an unjust judgment, partiality and undue delay in the resolution of an application for a temporary restraining order (TRO).

Complainant Atty. Dennis V. Niño is the lawyer representing Gentle Supreme, the respondent in CA-G.R. SP No. 94817, entitled "*Ricardo F. Consulta v. Gentle Supreme Philippines, Inc.*," which is a petition for annulment of a judgment rendered by the Regional Trial Court (RTC) of Pasig City.

The case below was an action for collection of a sum of money docketed as Civil Case No. 70544, entitled "*Gentle Supreme Philippines, Inc. v. Consar Trading Corp., Norberto Sarayba and Ricardo Consulta*," before the RTC, Branch 68 of Pasig City. Ricardo Consulta (Consulta) was impleaded as a defendant in his capacity as a corporate officer of Consar Trading Corporation. Judgment was rendered in favor of Gentle Supreme, thus:

WHEREFORE, in view of the foregoing, the Court finds the defendants to have fraudulently and maliciously defrauded plaintiff to the latter's damage and prejudice for which the defendants are hereby jointly and severally held liable and ordered to pay the plaintiff the following amounts:

- a. SIX MILLION SIX HUNDRED THREE THOUSAND SIX HUNDRED FORTY FOUR PESOS and 33 Centavos (Php6,603,644.33) plus twelve percent (12%) legal interest from July 2005 as actual damages;
- b. THREE HUNDRED THOUSAND (Php300,000.00) as attorney's fee; and
- c. Cost of suit.^[1]

To satisfy the judgment, a Notice of Sale on Execution of Real Property was issued

to Consulta notifying him that his house and lot will be sold at public auction on 15 June 2006.

Consulta filed a petition for Annulment of Judgment^[2] with the Court of Appeals on the ground of lack of jurisdiction, as he was not served copies of the summons and complaint relative to the case. He likewise prayed for the issuance of a TRO to enjoin the public sale of his property.^[3]

On 9 August 2006, a Resolution^[4] (August Resolution) penned by respondent was issued giving due course to the petition and directing the issuance of summons upon Gentle Supreme. Respondent deferred the resolution of the TRO.

Complainant filed his Answer with Counterclaim arguing that the prayer for issuance of TRO should be denied on the ground that the acts sought to be enjoined, specifically the public auction sale scheduled on 15 June 2006, had already been accomplished.^[5]

On 18 September 2006, complainant filed a Motion for Summary Judgment.^[6] Thereafter, he successively filed a motion for early resolution of the motion for issuance of TRO^[7] on 2 February 2007 and a reiteration of the Motion for Early Resolution^[8] on 26 March 2007.

In a Resolution dated 3 April 2007 (April Resolution), respondent directed Consulta to file a Comment on the Motion for Summary Judgment.^[9] Instead of submitting his Comment, Consulta filed a Motion for Inhibition of the entire division where respondent belongs. In a Resolution^[10] dated 3 May 2007 (May Resolution), respondent granted the motion to inhibit and directed an immediate re-raffling of the case to another division.^[11] In the same Resolution, respondent stressed that no TRO or *status quo* order was issued, because the act sought to be enjoined had already been performed, and the application had been rendered moot by the sale of the property to complainant.^[12]

On 14 June 2007, the instant Complaint was filed. Complainant zeroes in on two (2) Resolutions--the 9 August 2006 and the 3 May 2007 Resolutions -- to demonstrate the alleged gross ignorance of the law on the part of respondent. The assailed portion of the August Resolution reads:

The prayer for the issuance of the Temporary Restraining Order and/or Preliminary Injunction is held in abeyance pending issuance of the summons.

Meantime, considering the allegations in the instant Petition, in order not to render moot and academic the issues presented before this Court, Respondent is hereby urged to observe the principle of judicial courtesy, as enunciated in the cases of *Eternal Gardens Memorial Park, Corp. v. Court of Appeals*, *Joy Mart Consolidated Corp. v. Court of Appeals*, and *Jimmy T. Go v. Judge Abrogar*, and defer the implementation of the assailed Decision dated December 14, 2005, pending Our resolution of

the petitioner's application for Temporary Restraining Order and/or Writ of Preliminary Injunction.^[13] (Emphasis supplied)

Complainant contends that by deferring the resolution on the issuance of the TRO, respondent virtually restrained the trial court from further taking any action relative to the case. Hence, said resolution had the effect of granting the TRO without the benefit of a hearing and filing of a bond.

With respect to the May Resolution, wherein respondent noted that complainant was in possession of the subject property, complainant imputes gross ignorance of the law to respondent for failure to consider the express provisions of the law which grant possession to the auction sale buyer only after one year from registration of the certificate of sale, if no redemption is made. Complainant claims that, in this case, the one-year period had not yet lapsed, so the property remained with Consulta.

Moreover, complainant doubts the impartiality of respondent when the latter further observed in the same resolution that Consulta should be the one insisting on the court's ruling on the TRO and not respondent. Also, complainant equates inhibition of respondent from the case, without sufficient justification, to evasion of duty.

Finally, complainant accuses respondent of undue delay in the resolution of the motion for issuance of TRO, since the summons have long been issued and, until the filing of the complaint on 14 June 2007, respondent had not yet acted on the motions.

The Office of the Court Administrator (OCA), through its 1st Indorsement dated 18 June 2007, directed respondent to Comment on the Complaint.^[14]

In his Comment, respondent denies all the charges hurled against him. On the allegations of gross ignorance, respondent maintains that no TRO was issued, so hearing and filing of bond are not necessary. And he admits that a mistake was committed in the inclusion of the phrase "and is now in possession thereof," pertaining to Gentle Supreme in the footnote of his resolution.

Respondent insists that he is not partial to any party, and that he inhibited from the case only to dispel any doubt about his position.

In explaining that there was no undue delay, respondent points out that, in the first place, there was nothing to enjoin, since the auction sale sought to be enjoined had already been conducted on 15 June 2006 or two days after the case was raffled to him. Respondent reiterates that the resolution of Consulta's prayer for injunctive relief has already become moot and academic.

Complainant filed his Reply, to which respondent submitted a Rejoinder.

In its Resolution of 22 July 2008, this Court resolved to re-docket the administrative matter as a regular administrative case and to require the parties to manifest whether they would submit the instant case for resolution on the basis of the pleadings filed.^[15]