

THIRD DIVISION

[**A.M. NO. RTJ-06-2001 (FORMERLY OCA I.P.I. NO. 05-2234-RTJ), August 16, 2006**]

EQUITABLE PCI BANK, INC., COMPLAINANT, VS. JUDGE CELSO D. LAVIÑA, PRESIDING JUDGE OF BRANCH 71, REGIONAL TRIAL COURT OF PASIG CITY, RESPONDENT.

RESOLUTION

QUISUMBING, J.:

For our resolution is the complaint of Equitable PCI Bank charging respondent Judge Celso D. Laviña, presiding judge of the Regional Trial Court, Branch 71, Pasig City, with gross misconduct, conduct unbecoming a judge and member of the bar, gross ignorance of the law and procedure, and knowingly rendering an unjust judgment and order.

This case stems from what complainant Equitable PCI Bank alleges is visible bias by respondent in favor of the plaintiffs in Civil Cases Nos. 70098 and 68287, and hostility against the bank. However, since respondent's acts in Civil Case No. 68287 are also subject of another pending administrative matter,^[1] we limit this resolution to Civil Case No. 70098 only.

Civil Case No. 70098, entitled *Camden Industries, Inc. v. Equitable PCI Bank*, was for specific performance, accounting, and damages with prayer for the issuance of a temporary restraining order and preliminary injunction. Camden sought to enjoin Equitable PCI Bank from unjustly foreclosing the mortgage on the residential house and lot of Camden's president and from taking any further action to collect from Camden on the basis of certain trust receipt transactions, which Camden alleged were already fully paid. Camden also prayed that the bank be ordered to render a full accounting of all payments made through debit memos and deductions from its savings account.^[2]

On August 16, 2004, respondent issued a temporary restraining order. He heard Camden's application for preliminary injunction on August 31, 2004. He gave Equitable PCI Bank opportunity to present its lone witness, account officer Louie Landayan, who testified on direct, cross and re-direct examinations.^[3] Equitable PCI Bank asked that it be allowed to file a memorandum until September 3, 2004, or the Friday immediately preceding the expiration of the TRO which was set to expire the coming Sunday. Respondent denied the request. Then, on September 1, 2004, respondent granted the preliminary injunction against the bank. Pre-trial conference was set on October 21, 2004.

Meantime, because of the case, other banks began cutting Camden's credit line. No longer able to carry on with its import business, Camden sought to speed up the case. On September 6, 2004, Camden moved that the pre-trial conference be reset

to an earlier date. Respondent found Camden's reasons meritorious and granted the motion. The pre-trial conference was thus moved to September 23, 2004.^[4]

Eight days before the pre-trial, however, Atty. Allan Christopher Agati, counsel for Equitable PCI Bank, manifested to the court that he would be out of town on said date. He asked for a resetting, which respondent granted on September 23, 2004. Pre-trial conference was moved to October 5, 7 and 21, 2004.

Atty. Agati was unable to attend on October 5, 2004, as he had manifested. Respondent thus rescheduled the pre-trial to October 14, 2004 but cancelled the other two previously set dates. Later, respondent also denied the motion to reconsider the grant of preliminary injunction.^[5]

On October 14, 2004, the pre-trial conference was held. Equitable PCI Bank moved that the case be referred to mediation, as required by A.M. No. 03-1-09-SC, since both parties had manifested in their pre-trial briefs their willingness to compromise. Camden opposed the motion arguing that referral to mediation was futile and dilatory because the parties had taken irreconcilable positions. Camden cited that while it claimed that all its debts had been fully paid, the bank insisted that Camden still owed hundreds of millions. Camden also stressed that the bank had filed a criminal case for violation of the trust receipts law against Camden's president, thus making amicable settlement of the dispute highly unlikely.^[6]

Finding amicable settlement through mediation impossible, respondent continued with the pre-trial and finished it on the same day despite the bank's objections. By agreement of the parties, who both committed to present only one witness each, reception of evidence for Camden was set on October 28, 2004 and November 5, 2004 for Equitable PCI Bank.^[7]

Equitable PCI Bank then went to the Court of Appeals on a petition for certiorari to assail the order granting the preliminary injunction, the denial of the motion for reconsideration, as well as the denial of its motion to refer the case to mediation.

The petition, docketed as CA-G.R. SP No. 87030, was eventually dismissed and the dismissal affirmed by this Court.^[8] Meanwhile, however, Equitable PCI Bank sought to defer the proceedings at the trial court. Atty. Agati filed a motion to defer proceeding shortly before the hearings scheduled on October 28, 2004, then insisted that he be heard on his arguments although said motion, having been filed only that morning, was not set for hearing. Because there was no temporary restraining order from the Court of Appeals, respondent denied the motion in open court.^[9]

Aggrieved, Atty. Agati manifested that Equitable PCI Bank will no longer participate in the hearings. He nonetheless attempted to explain further his motion, but before he could, a bomb threat was reported. Respondent thus simply reiterated the denial and immediately ordered a short recess.^[10] When the proceedings resumed later that morning, Atty. Agati was no longer in the premises. Respondent then ordered the sheriff to find Atty. Agati but to no avail.^[11]

Thus, respondent allowed Camden's lone witness to testify on direct examination. Upon Camden's motion, and pursuant to the One-Day Examination of Witness Rule,

[12] respondent declared Equitable PCI Bank to have waived its right to cross-examination. After that, Camden offered orally and *ex parte* its additional documentary exhibit. Respondent admitted the exhibit, then ordered that trial continue for the reception of evidence for Equitable PCI Bank on November 5, 2004, as previously set.^[13] Equitable PCI Bank did not seek reconsideration of the order declaring it to have waived its right to cross-examine Camden's witness.

Instead, Equitable PCI Bank changed counsels. Atty. Winston Esguerra entered his appearance on November 4, 2004, as the bank's new counsel. He moved that the hearing be reset to December 3, 2004, because of a previously scheduled hearing in another court and to give him time to study the case.^[14]

It does not appear that a formal order was issued acting on the motion for postponement, but no hearing was conducted on November 5, 2004 since respondent was on leave. The Branch Clerk of Court on the same date promptly issued notices to the parties that the hearing had been moved to November 11, 2004.^[15] Said notice was received by Atty. Esguerra on November 9, 2004.

Meantime, Equitable PCI Bank believed that it could no longer expect a fair judgment from respondent. It filed a motion for voluntary inhibition on November 8, followed by a supplemental motion on November 9, 2004.

On November 11, 2004, hearing for the reception of evidence for Equitable PCI Bank was conducted. Equitable PCI Bank's new counsel was absent despite notice. Thus, Camden moved that Equitable PCI Bank be deemed to have waived its right to present evidence. Respondent granted the motion and ordered the parties to submit their memoranda within 30 days.^[16] Equitable PCI Bank, however, never filed any. Neither did Equitable PCI Bank move for a reconsideration of the order declaring it to have waived its right to present evidence.

On November 12, 2004, respondent heard the motion and supplemental motion for inhibition. It appeared that the main motion for inhibition complied with the 3-day notice rule, but Camden had not filed any opposition nor comment. Hence, respondent deemed said motion submitted for decision. It also appeared that Camden only received the supplemental motion with two days advance notice. Thus, respondent gave Camden ten days to comment on the motion, over the objection of Equitable PCI Bank, which insisted that Camden nonetheless be deemed to have waived its right to be heard on the motion for failing to appear.^[17]

On January 21, 2005, respondent denied Equitable PCI Bank's motion and supplemental motion for inhibition. Equitable PCI Bank sought reversal of the order, but respondent denied the motion for reconsideration.^[18] Then, on March 30, 2005, respondent rendered a decision in Civil Case No. 70098 against Equitable PCI Bank.^[19]

Equitable PCI Bank timely filed a motion for reconsideration or new trial asking that it be allowed to present evidence. Later, Equitable PCI Bank also brought the trial court's decision to the Court of Appeals on a petition for certiorari, which was docketed as CA-G.R. SP No. 89370.^[20] In the meantime, respondent issued a special order on April 15, 2005, granting execution pending appeal over the

opposition of Equitable PCI Bank.^[21]

Equitable PCI Bank now alleges in the instant complaint that respondent railroaded the case in Camden's favor, in obvious hostility against Equitable PCI Bank.

Equitable PCI Bank avers that respondent is liable for grave misconduct, conduct unbecoming a judge and a member of the bar, gross ignorance of the law, and knowingly rendering an unjust judgment or order since (1) respondent allegedly gave Equitable PCI Bank only 15 minutes to adduce its evidence during the hearing on Camden's application for preliminary injunction; (2) respondent denied its request to submit a memorandum to support its opposition to the application; (3) respondent granted Camden's motion to set the pre-trial conference at an earlier date than the previous date set, despite Atty. Agati's manifestation that he would not be available at said earlier date; (4) respondent refused to refer the case to mediation in violation of A.M. No. 03-1-09-SC and despite the statement of the parties in their briefs that they are open to an amicable settlement of the case; (5) respondent refused to suspend the proceedings notwithstanding the pendency of a petition for certiorari at the Court of Appeals questioning his refusal to refer the case to mediation; (6) he allowed Camden to present evidence ex parte and to offer its evidence orally in one trial date notwithstanding the bomb threat on that day; (7) he gave Equitable PCI Bank only one trial date; (8) he denied Atty. Esguerra's request for time to study the case; (9) he hastily set the November 11, 2004 hearing despite the pending motion for inhibition and motion by Atty. Esguerra to move the presentation of evidence for Equitable PCI Bank to December 3, 2004; (10) he took advantage of the absence of the bank's counsel during the November 11, 2004 hearing to declare Equitable PCI Bank to have waived its right to present evidence; (11) he refused to inhibit himself; and (12) he acted with undue haste to decide the case.^[22]

Complainant prays that respondent be dismissed from the service, with forfeiture of all his retirement benefits and further, that he be disbarred.

In his Comment, respondent claims that Equitable PCI Bank's two counsels, Attys. Agati and Esguerra, maliciously filed the case to block the early release of his retirement benefits and cover for their professional incompetence which caused Equitable PCI Bank to lose its case.^[23]

He urges this Court to dismiss the complaint, arguing that the complaint is insufficient in form and substance. Attys. Agati and Esguerra, according to him, were not properly authorized to file the case. The Board Resolution providing a standing authority to certain bank officials to file cases on behalf of the bank was allegedly insufficient because it was too broad and did not specifically authorize either of them to file the instant complaint. Also, the complaint contained no certification against forum shopping and the verification was signed by only one of them.^[24]

Respondent adds that the instant complaint is premature and that the issues involved are *sub judice*. He stresses that Equitable PCI Bank has filed with the Pasig RTC a motion for reconsideration or new trial and has likewise assailed the decision in a petition for certiorari at the Court of Appeals.^[25]