

## THIRD DIVISION

[ G.R. NO. 160966, October 11, 2005 ]

**PAGODA PHILIPPINES, INC., PETITIONER, VS. UNIVERSAL  
CANNING, INC.,\* RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

The Rules on voluntary inhibition do not give judges the unfettered discretion to desist from hearing a case. The motion for inhibition must be grounded on just and valid causes. The mere imputation of bias or partiality is not enough basis for them to inhibit, especially when the charge is groundless.

#### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, challenging the August 14, 2003 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-GR SP No. 77514 and the November 24, 2003 Resolution<sup>[3]</sup> denying petitioner's Motion for Reconsideration. The decretal portion or *fallo* of the assailed Decision reads as follows:

"**WHEREFORE**, foregoing considered, the instant petition for mandamus is hereby **GRANTED**. Public respondent's Order dated May 22, 2003, voluntarily inhibiting himself from the case is hereby **SET ASIDE**. Public respondent is **DIRECTED** to continue hearing the case and dispose of the same with utmost dispatch."

#### The Facts

The facts are narrated by the CA as follows:

"[Petitioner] filed a civil complaint against [respondent] for Trademark Infringement, False Representation and Unfair Competition with Damages and Injunction. The case was docketed as Civil Case [N]o. 02-102988.

"[Petitioner] claimed that [respondent's] "Family's Brand" Sardines is confusingly similar with [petitioner's] "Family Brand" Sardines. [Petitioner] insisted that it has superior right to use the trademark "Family" than [respondent].

"[Respondent] filed an "Answer with Compulsory Counter-claim and Motion to Dismiss and Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction."

"[Respondent] prayed that [petitioner] be enjoined from using the trademark "Family" and to pay damages. [Respondent] further asked

[Judge Antonio M. Eugenio, Jr.] to set the hearing for its motion to dismiss the action on the grounds of lack of authority of the affiant of the complaint to institute the action, insufficient verification and failure to exhaust administrative remedies.

"After hearing, [Judge Eugenio] issued a temporary restraining order enjoining [petitioner] to use the trademark "Family."

"On March 21, 2003, [Judge Eugenio] dismissed without prejudice, [petitioner's] complaint on the ground of insufficient verification as invoked by [respondent].

"[Respondent] filed a motion for reconsideration of the Order dismissing [petitioner's] complaint, claiming that the defect in the verification has been rendered moot and academic by subsequent rulings respective to the application for preliminary injunction and that the attending circumstances of the case warrant liberal compliance [with] the rule.

"[Petitioner] filed a "Motion for Voluntary Inhibition," requesting [Judge Eugenio] to inhibit himself from proceeding to hear, try and decide the pending incidents of the case to afford [petitioner] an impartial trial.

"[Respondent] opposed [petitioner's] "Motion for Voluntary Inhibition."

"On May 22, 2003, [Judge Eugenio] issued an Order voluntarily inhibiting himself from further hearing the case.

"Hence, [the] petition [filed with the CA] by [respondent] for mandamus to compel [Judge Eugenio] to continue to hear the pending incidents of the case."<sup>[4]</sup>

### **Ruling of the Court of Appeals**

Finding no valid and just reason for the voluntary inhibition of Judge Eugenio, the CA issued the writ of mandamus. It ruled that the present case fell within the exception that mandamus would lie in instances of gross abuse of discretion.

Hence, this Petition.<sup>[5]</sup>

### **Issue**

The issue was worded by petitioner in this wise:

"The principal issue raised by the petitioner for this Honorable Court to resolve is whether or not a petition for mandamus is the proper remedy to assail a purely discretionary act of Judge Antonio Eugenio, Jr. of voluntarily inhibiting himself from hearing Civil Case No. 02-102988 and corollary thereto, whether Judge Eugenio, Jr. who inhibited himself in accordance with the law and the Rules, can be compelled to perform an act he had already decided not to do with the intention of assuring the litigants of an impartial trial."<sup>[6]</sup>

The Court believes that there are actually two issues to be settled in this case: *first*, whether mandamus is the proper remedy to assail an order of voluntary inhibition; and *second*, whether there was a valid and just reason for the voluntary inhibition of the trial court judge.

### **The Court's Ruling**

The Petition is unmeritorious.

#### **First Issue:** **Remedy Against the** **Order of Voluntary Inhibition**

At the outset, we note that petitioner, in an effort to cover its bases, filed the present Petition as *both* a petition for review under Rule 45 *and* a petition for certiorari under Rule 65 of the Rules of Court. The applicable rule is Rule 45, which clearly provides that decisions, final orders or resolutions of the CA in any case -- regardless of the nature of the action or proceeding involved -- may be appealed to this Court through a petition for review. This remedy is a continuation of the appellate process over the original case.<sup>[7]</sup> "It is basic that where Rule 45 is available, and in fact availed of as a remedy -- as in this case -- recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal."<sup>[8]</sup>

The procedural infirmity notwithstanding, this Court shall deal with this Petition as one filed under Rule 45 only and shall treat the alleged grave abuse of discretion on the part of the CA as an allegation of reversible error.

Petitioner claims that respondent erred when the latter questioned the trial judge's Order of Voluntary Inhibition --supposedly a purely discretionary act -- through a Petition for Mandamus filed with the CA.

While, ordinarily, mandamus will not prosper to compel a discretionary act, the writ shall issue in instances of gross abuse of discretion, manifest injustice or palpable excess of authority, equivalent to denial of a settled right to which petitioner is entitled; *and* when there is no other plain, speedy and adequate remedy.<sup>[9]</sup> This Court has recognized that "[a] judge's decision to refuse to act on account of some disqualification is not conclusive, and his competency may be determined on an application for mandamus to compel him to act."<sup>[10]</sup>

#### **Second Issue:** **Inhibition**

Section 1 of Rule 137 of the Rules of Court provides:

"Section 1. Disqualification of judges. No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling