

## FIRST DIVISION

**[ A.M. No. MTJ-02-1433 (formerly OCA IPI No, 00-995-MTJ), February 21, 2003 ]**

**TOMAS R. LEONIDAS, PETITIONER, VS. FRANCISCO G. SUPNET,  
IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 47,  
METROPOLITAN TRIAL COURT OF PASAY CITY, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Petitioner Tomas R. Leonidas charges respondent Judge Francisco G. Supnet of the Metropolitan Trial Court of Pasay City, Branch 47, with gross ignorance of the law, grave abuse of authority, misconduct and conduct prejudicial to the proper administration of justice, for citing petitioner in contempt of court.

#### The Facts

On April 13, 1998, Union Bank of the Philippines ("Union Bank" for brevity), with petitioner Atty. Tomas R. Leonidas ("petitioner" for brevity) as counsel, filed a complaint against the spouses Eddie Tamondong and Eliza Tamondong ("Tamondong Spouses" for brevity) to collect the latter's unpaid loan secured from Union Bank to buy a motor vehicle. Union Bank prayed for the issuance of a writ of replevin. The case was docketed as Civil Case No. 98-0717 before Branch 109 of the Regional Trial Court of Pasay City ("Pasay RTC" for brevity).

On June 29, 1998, for lack of interest to prosecute, the Pasay RTC dismissed the complaint without prejudice. Thereafter, Union Bank filed a motion for reconsideration. On September 11, 1998, the Pasay RTC reinstated the case. Because Union Bank did not take any steps to prosecute the case, on June 23, 1999, the Pasay RTC issued an order dismissing again the case. <sup>[1]</sup>

On March 15, 2000, Union Bank, with petitioner again as counsel, filed against the Tamondong Spouses another complaint to collect the same unpaid loan with a prayer for a writ of replevin. This case, docketed as Civil Case No. 342-00, was filed with Branch 47 of the Metropolitan Trial Court of Pasay City ("Pasay MTC" for brevity) presided by respondent Judge Francisco G. Supnet ("respondent judge" for brevity). On March 29, 2000, the Pasay MTC issued a writ of replevin.

On April 12, 2000, the Tamondong Spouses, in response to Union Bank's action, filed a pleading captioned "Urgent Motions" wherein they prayed for the following reliefs: (1) to dismiss the case docketed as Civil Case No. 342-00; (2) to set aside the writ of replevin; (3) to order the immediate return of the replevied vehicle and (4) to cite Union Bank and its counsel for contempt of court for forum shopping and

for misleading the court.

In an Order dated May 9, 2000, the Pasay MTC promptly acted on the Tamondong Spouses' Urgent Motions. The Pasay MTC dismissed Civil Case No. 342-00, recalled the order of the writ of replevin, and **ordered Union Bank to return immediately the motor vehicle to the Tamondong Spouses.** Moreover, for violating the rule against forum shopping and for making a false certification against forum shopping, [2] the Pasay MTC cited Union Bank, its collection officer Desi Tomas and petitioner in contempt of court. The Pasay MTC ordered each of them to pay a fine of P5,000.00 without prejudice to civil, criminal or administrative actions. This is the first of two contempt orders issued by respondent judge in Civil Case No. 342-00.

On May 16, 2000, Union Bank filed a motion to reconsider the Pasay MTC's Order of May 9, 2000. Pending resolution of this motion, on June 5, 2000, Union Bank filed a notice of dismissal under Section 1, Rule 17 of the 1997 Rules of Civil Procedure. In its Order of June 6, 2000, the Pasay MTC denied the motion for reconsideration but made no mention of Union Bank's notice of dismissal. **Moreover, in its Order of June 6, 2000, the Pasay MTC ordered Union Bank to show cause why it should not be held in contempt for failing to return the vehicle of the Tamondong Spouses as earlier directed by the court.**

However, in its Compliance dated June 20, 2000, Union Bank questioned the manner in which the Tamondong Spouses commenced the contempt charge for it supposedly did not conform to the proper procedure. Admitting that it ignored the Order of May 9, 2000, Union Bank explained that a provision in the chattel mortgage contract granted Union Bank the right to take possession of the motor vehicle upon breach of the obligation.[3] Union Bank prayed that the Tamondong Spouses' motion dated May 17, 2000 to cite the bank in contempt be denied due course and dismissed.

On July 20, 2000, the Pasay MTC issued a writ of execution to enforce payment of the original contempt fine imposed upon Union Bank's collection officer Tomas and petitioner. The Pasay MTC also ordered Union Bank again to immediately return the replevied motor vehicle. For Union Bank's failure to comply with its Order of May 9, 2000, the Pasay MTC again cited collection officer Tomas and petitioner in contempt and ordered them to pay another fine of P5,000.00 each. This is the second contempt order issued by respondent judge.

On August 1, 2000, petitioner filed a Motion for Reconsideration of the Order of July 20, 2000 which included the second contempt order. Petitioner also prayed that the notice of dismissal Union Bank earlier filed on June 6, 2000 be confirmed and all orders issued in the case be set aside.[4]

On September 7, 2000, the Pasay MTC denied the plaintiff's motion for reconsideration of the Order of July 20, 2000. The Pasay MTC stated that the motion was without merit because there was deliberate and willful failure by collection officer Tomas and petitioner to comply with the May 9, 2000 Order which ordered the return of the replevied vehicle.

Hence, petitioner filed the present administrative case for gross ignorance of the law, grave abuse of authority, misconduct and conduct prejudicial to the proper administration of justice. Petitioner states that respondent judge cited him in

contempt for refusing to return the replevied motor vehicle to the Tamondong Spouses. Petitioner, however, claims that it was erroneous for respondent judge to have done so since the Order of May 9, 2000 was addressed to Union Bank alone. The May 9, 2000 Order did not direct petitioner, but rather Union Bank alone, to return the replevied vehicle.

Petitioner further maintains that he should not be held responsible for submitting a false certificate against forum shopping for the simple reason that he did not sign the certification.<sup>[5]</sup> As gleaned from the pleadings, it is Union Bank collection officer Tomas whose signature appears on the certification against forum shopping. <sup>[6]</sup>

Petitioner also accuses respondent judge of ignoring the procedure that must first be observed before citing one in indirect contempt, invoking Section 4, Rule 71 of the 1997 Rules of Civil Procedure.<sup>[7]</sup> Petitioner contends that the contempt charge initiated by the Tamondong Spouses did not comply with the requirements prescribed in Section 4. Therefore, by giving due course to these motions, respondent judge improperly issued his contempt order. For respondent judge's error, petitioner prays for nothing less than his dismissal from the service and the forfeiture of all privileges appurtenant to his office.<sup>[8]</sup>

In his Comment filed on January 10, 2001,<sup>[9]</sup> respondent judge insists that he duly observed the procedural requirements for declaring petitioner in indirect contempt. Respondent judge even gave a chronological account of the proceedings that took place prior to the issuance of the contempt order. He points out that judges are not infallible and cites that the Court has ruled that to hold a judge accountable for every erroneous ruling or decision would be nothing short of harassment and would make his job unbearable.<sup>[10]</sup> Averring that he faithfully conformed to the procedure laid down by the law, respondent judge implores the Court to dismiss the administrative case filed against him.

### **OCA's Report and Recommendation**

The Office of the Court Administrator ("OCA" for brevity) opined that respondent judge was correct in stating that the petitioner should have appealed the Pasay RTC's orders of dismissal instead of filing the case before the Pasay MTC. The OCA's primary concern is the procedure adopted by respondent judge in issuing the contested orders.

On the first order which declared petitioner in direct contempt of court, the OCA found no reason to hold respondent judge administratively liable. Although the wording of the dispositive portion of the order is imprecise, the order clearly sought to punish two acts. The first act being punished is the violation of the rule against forum shopping, and the second act is the submission of a false certificate against forum shopping. Respondent judge cited petitioner in contempt for the first act, that is, for filing Civil Case No. 342-00, which was exactly the same case as Civil Case No. 98-0717 which the Pasay RTC had already dismissed. Thus, the OCA opined that petitioner's act constitutes direct contempt which respondent judge may punish summarily pursuant to Section 1, Rule 71 of the 1997 Rules of Civil Procedure.<sup>[11]</sup>

It is on the second order declaring petitioner guilty of indirect contempt that the

OCA found respondent judge remiss in his duties.

Unlike the first contempt, the second contempt is governed by Section 4, Rule 71 of the 1997 Rules of Civil Procedure, which provides that proceedings for indirect contempt must be initiated either *motu proprio* by the court, or by verified petition.

[12] Here, petitioner clearly committed an act constituting indirect contempt. However, the OCA found that the Tamondong Spouses initiated the contempt proceedings by mere motion, and not by a verified petition as required by the Rules.

[13] The OCA stated that respondent judge took cognizance of the contempt action through the Tamondong Spouses' Urgent Motions<sup>[14]</sup> and Motion to Cite Plaintiff For Contempt of Court,<sup>[15]</sup> neither of which were verified petitions.

Therefore, the OCA recommended that respondent Judge Francisco G. Supnet be fined in the amount of P5,000.00 for gross ignorance of the law with a warning that a similar offense in the future shall be dealt with more severely.

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

The Court adopts the conclusions and recommendation of the Court Administrator but disagrees with its findings as to how the second contempt proceeding was initiated.

Courts are vested with the power to penalize a party for filing an action raising the same basic issues as one still pending or already disposed of which the same party has filed in another court. Such an act is deemed an abuse of the processes of the court. To curb and punish such abuses, courts are vested with the power to declare the guilty party in contempt. A counsel who participates in such abuse of court processes can also be held in contempt. The contempt power is a means by which the court exercises its authority over those within its jurisdiction, as well as enables the court to enforce its decisions effectively.

The rule is well-settled that a court should be informed of the pendency of a similar proceeding a party has filed. The responsibility cannot be taken lightly because of the harsh penalties the law prescribes for non-compliance. As provided in Section 5, Rule 7 of the Rules of Court,<sup>[16]</sup> failure to comply with the requirements prescribed in Section 5 may cause one to be declared in indirect contempt of court. Moreover, if the non-compliance is willful and deliberate, then such person may even be declared guilty of ***direct contempt*** of court.

Neither Union Bank nor petitioner as its counsel bothered to inform the Pasay MTC that the Pasay RTC had previously dismissed a case of the same nature and involving the same parties. The Tamondong Spouses were the ones who brought it to the attention of the Pasay MTC.

Section 5, Rule 7 of the 1997 Rules of Court specifically mandates that either the "***plaintiff or principal party filing the initiatory pleading***" must disclose to the court the pendency of another proceeding concerning the same case. Obviously, since Union Bank initiated the case, it was its duty to make such disclosure. In this case, Union Bank failed to discharge such obligation – an action tantamount to contempt of court.

Moreover, petitioner argues that respondent judge's order citing him in contempt for executing a false certification against forum shopping is erroneous. Petitioner claims that it was Union Bank's collection officer Tomas who signed the certificate. Petitioner argues that the certification should be signed by a Union Bank officer and not by counsel. A certification by counsel is a defective certification and is clearly equivalent to non-compliance with the requirement in the second paragraph of Section 2, Rule 42,<sup>[17]</sup> in relation to Section 4, Rule 45,<sup>[18]</sup> warranting the dismissal of the petition.<sup>[19]</sup>

As stated in Section 5, Rule 7 of the Rules of Court, "***if the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.***" This shows that even if the petitioner did not sign the certification, if from the circumstances one can infer a willful and deliberate attempt to mislead the courts, he can still be held in ***direct contempt.***

Both Union Bank and petitioner were aware of the consequences that came with the submission of a false certification. Strangely, Union Bank collection officer Tomas signed the certification against forum shopping – an act which is normally outside the scope of her assigned tasks. The execution of such certification is a rather serious responsibility assigned to a member of the bank's Board of Directors or one of its higher-ranking officers.<sup>[20]</sup> Normally, a collection officer is not privy to legal matters of the corporation, and for the corporation to hide behind a person who is without such knowledge arouses one's suspicions. The reason for requiring the plaintiff himself to sign the certification is that only the plaintiff has actual knowledge of whether he has initiated similar actions or proceedings in different courts or agencies.<sup>[21]</sup> In the case of a corporation, a duly authorized Board member or a senior ranking officer must sign the certification. A mere collection officer is not expected to know the court cases in which the corporation is a party litigant.

Thus, the first order issued by respondent judge declaring petitioner in direct contempt was issued to punish his act of forum shopping as well as for his participation in the submission of a false certification against forum shopping. The order of respondent judge suffers no legal defect contrary to the stance taken by petitioner.

On the second order which declared petitioner in indirect contempt of court, respondent judge also followed the correct procedure.

Petitioner was under the mistaken belief that the order declaring him in indirect contempt was improper for not having been issued in accordance with the procedure laid down by the Rules. Petitioner claims that an order of indirect contempt can only be issued after the proceedings therefor have been initiated either by verified petition or by the court *motu proprio*. In his petition, petitioner states:

"x x x Firstly, the respondent took cognizance of the contempt charges were embodied in ordinary motions, and not formulated in a separate verified petitions (sic)...All charges of contempt were initiated by