

## **THIRD DIVISION**

**[ A.M. No. RTJ-94-1257, March 06, 1998 ]**

**JOSE SY BANG AND ILUMINADA TAN, COMPLAINANTS, VS.  
JUDGE ANTONIO MENDEZ AND ATTY. VICENTE JOYAS,  
RESPONDENTS.**

### **D E C I S I O N**

**KAPUNAN, J.:**

The instant administrative case is the sequel to A.M. No. RTJ-91-672 filed by herein complainants Spouses Jose Sy Bang and Iuminada Tan against the same respondent Judge Antonio Mendez. The antecedents facts are narrated in the decision in A.M. No. RTJ-91-672 dated September 28, 1993, as follows:

Two (2) lots, with an ice plant and improvements thereon situated at Calauag, Quezon, were originally owned by DBP and were leased to Suarez Agro-Industrial Corporation (corporation, for brevity) for a period of one year starting on July 1, 1983. After the one year period, DBP allowed the corporation to continue leasing said properties on a monthly basis . The corporation, however, became delinquent in its rental payments. From the period July 1987 until September 1990, its unpaid rentals amounted to P650,000.00. Thus, on August 16, 1990, DBP demanded that the corporation vacate the properties. It refused. On December 15, 1990, DBP sold the properties to complainant-spouses. They were duly registered in their names.

On December 21, 1990, complainants again demanded that the corporation vacate the properties. Once more, the demand was refused. The complainants then filed with the Municipal Trial Court of Calauag, Quezon an ejectment suit (docketed as Civil Case No. 814) against the corporation. The Court issued a restraining order enjoining the corporation from further operating the ice plant. Not to be outdone, the corporation filed an action for specific performance and annulment of sale with preliminary injunction against DBP and the spouses before the Makati, RTC, Branch 134 (docketed as Civil Case No. 90-3511).

The spouses filed a motion to dismiss Civil Case No. 90-3511 for improper venue considering that the subject lots were situated in Calauag, Quezon. The motion was, however, denied and a writ of preliminary injunction was issued enjoining the spouses from taking possession of the subject properties. The spouses elevated the case to the Court of Appeals on certiorari. In a decision dated April 15, 1991, the Court of Appeals declared the Makati RTC to be devoid of authority to hear the case and ordered its dismissal. A motion for reconsideration filed

on May 10, 1991 was denied in a Resolution dated May 22, 1991 on the ground that it was filed out of time.

While the above case was pending before the Makati RTC (the corporation's period to file a motion for reconsideration not having as yet lapsed), the corporation filed on April 24, 1991 the same action (for specific performance and annulment of sale, with preliminary and prohibitory injunction) against the same parties (DBP and the spouses), this time before the RTC of Gumaca, Quezon, Branch 62, presided by respondent judge (docketed as Civil Case No. 2137-G). At this point, it is noteworthy to mention that there were only two (2) RTC branches in Gumaca, Quezon (Branches 61 and 62) and both were then presided by the respondent judge, he being the pairing judge in Branch 61.

On even date, respondent judge issued a temporary restraining order (TRO) against DBP and the spouses. Hearing on the prayer for injunction was set on May 9, 1991. However, the TRO was not implemented for the spouses had already entered and were in possession of the premises even before the petition was filed. Since the court failed to order the spouses to restore possession of the property to the corporation, an *ex-parte* motion to amend said TRO was made by the corporation. The motion was granted in an Order dated April 30, 1991 and the date of hearing was reset to May 7, 1991.

The spouses still refused to leave the premises claiming that the plaintiff corporation had not posted a bond and the writ did not state to whom possession of the premises should be surrendered.

At the hearing held on May 8, 1991, both parties presented evidence on the issue of whether or not the preliminary mandatory injunction should be granted. In an Order of even date, respondent judge considered the case submitted for decision within twenty (20) days from April 30, 1991. Thereafter, on May 14, 1991, respondent judge granted the writ of injunction upon the filing of a one million peso bond by the corporation.

On May 17, 1991, the corporation filed an *ex-parte* motion to approve the bond issued by Plaridel Surety and Insurance Co.

On May 18, 1991, the spouses filed a Manifestation and Motion before respondent judge informing the latter of the pendency before the Makati RTC of the same action between the same parties and thus prayed for the dismissal of the Gumaca case. The motion was denied by respondent judge in an Order dated May 21, 1991, for being moot and academic.<sup>[1]</sup>

Here, complainants charge respondent judge with gross impropriety in failing to lift the writ of preliminary mandatory injunction in Civil Case No. 2137-G despite the Decision dated February 2, 1993 of the Court of Appeals setting aside respondent judge's May 14, 1991 order granting the writ.<sup>[2]</sup> Complainants filed on June 25, 1991, a petition for *certiorari* and prohibition with the Court of Appeals contending that the trial court's writ of preliminary injunction was a patent nullity.

Respondent judge is further charged with failing to resolve complainants' motion to lift or dissolve the writ of preliminary mandatory injunction for several months despite the lack of a valid bond covering the writ.<sup>[3]</sup> It appears that respondent judge was informed on February 10, 1992 through telegram from a certain Atty. Galalones of the Office of the Clerk of Court that Plaridel Surety and Insurance Co.'s authority to operate as a bonding entity has been suspended, as of January 28, 1992.<sup>[4]</sup> Complainants allege that as a consequence of the suspension of Plaridel's authority, they filed a manifestation and motion to dissolve the writ of injunction issued by respondent judge. Respondent judge failed to act on complainant's motion and Atty. Joyas did not file a substitute bond, prompting complainants to reiterate on October 25, 1993 their motion to dissolve the writ.

Respondent judge and Atty. Joyas are also charged with falsification of a public document committed by inserting a falsified bond in the civil case "in order to justify the effectivity of the writ wrongfully issued and illegally maintained through the conspiracy of respondents."<sup>[5]</sup> Complainants allege that upon their examination of the record of Civil Case No. 2137-G, they saw that a bond from Country Bankers' Insurance Corporation was "surreptitiously inserted," without any accompanying pleading, at pages 641 to 647. Upon their verification, complainants found the bond to be fake.<sup>[6]</sup>

This administrative matter was referred to Justice Omar U. Amin of the Court of Appeals for investigation, report and recommendation.<sup>[7]</sup>

Anent the first charge, respondent judge could not as yet execute the appellate court's decision setting aside his Order dated May 14, 1991 granting the writ of preliminary mandatory injunction, ruling that "the [corporation's] alleged right to retain possession of the controverted property is unclear and doubtful."<sup>[8]</sup> The adverse party, Suarez Agro-Industrial Corporation, timely filed on February 24, 1993 a petition for review with this Court.<sup>[9]</sup> This Court resolved the petition for review on December 5, 1994, affirming the appellate court's ruling and denying the petition, long after the case was transferred to another branch of the regional trial court as a result of respondent judge having inhibited himself from hearing Civil Case No.2137-G.

As to the second charge, we find that respondent judge was unable to explain satisfactorily his failure to act on complainant's motion to dissolve the writ with dispatch, although he had been informed of the invalidity of the Plaridel bond.

It appears that on June 25, 1993, complainants filed a manifestation and motion praying for an order requiring Suarez Agro-Industrial Corporation to file another bond in lieu of the Plaridel bond. The corporation, through Atty. Joyas, filed on July 9, 1993 a motion praying that it be given a period of fifteen days within which to file a substitute bond. On September 17, 1993, the corporation, after failing to file a bond within the fifteen days, filed a motion praying that it be given a further ten days to file a bond. In an Order dated September 21, 1993, the court gave the corporation a period of ten days from even date. The ten days passed without a bond being filed, prompting complainants to file again on November 3, 1993 still another