

## THIRD DIVISION

**[ A.M. NO. RTJ-05-1915 (FORMERLY A.M. OCA  
I.P.I NO. 03-1735-RTJ), May 06, 2005 ]**

**ALFERO C. BAGANO, COMPLAINANT, VS. JUDGE AGAPITO L.  
HONTANOSAS, REGIONAL TRIAL COURT (RTC), BRANCH 16,  
CEBU CITY, RESPONDENT.**

### DECISION

#### **CARPIO-MORALES, J.:**

By a verified complaint<sup>[1]</sup> dated March 3, 2003, Alfero C. Bagano (complainant) charges Judge Agapito L. Hontanosas (respondent), Presiding Judge of the Regional Trial Court (RTC) of Cebu City, Branch 16, for gross ignorance of the law and procedure, undue delay in rendering an order, and grave abuse of discretion.

The antecedents of the case are as follows:

In a forcible entry case filed by complainant against Claudio Reyes (Reyes), et al. involving Lot No. 7708, the Municipal Trial Court of Talisay, Cebu rendered judgment<sup>[2]</sup> on November 27, 1995 in complainant's favor.

On May 25, 2000, Reyes filed before the Cebu RTC a "Motion to Cancel Statutory Lien"<sup>[3]</sup> praying for the cancellation of the following annotations on Transfer Certificate of Title (TCT) No. 112336 of the Register of Deeds of the Province of Cebu, which title appears to have covered Lot No. 7708:

Except in favor of the Government or any of its branches or institutions, or legally constituted banking corporations, be subject to encumbrances or alienation before five years after the date of the issuance of the transfer certificate of title to the purchaser, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of the said period; but temporary improvements or crops on the land may be mortgaged or pledged to qualified persons, corporations, or associations; and that every conveyance shall be subject to repurchase by the original purchaser or his legal heirs within a period of five (5) years from the date of the conveyance. It is hereby specifically agreed that notwithstanding the provisions of Article 652 of the New Civil Code, the Republic of the Philippines is exempted from the obligation to grant a right of way to the grantee herein. And subject further to the condition that the land granted therein shall not be used for any purpose other than for which the said land was applied and any change in land use shall be subject to the approval of the Housing and Land Use Regulatory Board.<sup>[4]</sup>

In the motion, Reyes alleged that the annotations "were done illegally because Lot No. 7708 had long ceased to be public land the ownership of which had passed to

Arcadio Reyes" of which he was the sole heir.

On June 6, 2000, respondent, by Order<sup>[5]</sup> of even date, denied the "Motion to Cancel Statutory Lien."

Three days later or on June 9, 2000, respondent issued another Order<sup>[6]</sup> granting the motion. Arcadio Reyes' TCT No. 112336 was later cancelled and TCT No. 112716 was issued in Reyes' name. On account of subsequent sales transactions involving TCT No. 112716, it was cancelled and TCT Nos. 114755, 114756, 114757 and 114758 were issued.

On learning of the issuance by respondent of the June 9, 2000 Order canceling the statutory lien on the title covering Lot No. 7708, complainant filed a Petition for Relief from Judgment<sup>[7]</sup> which was granted by respondent by Order<sup>[8]</sup> of September 14, 2001. Said latter Order became final and executory on October 13, 2001 per Entry of Judgment<sup>[9]</sup> dated November 8, 2001.

Complainant thereupon filed on December 7, 2001 a "Motion to Cancel Subsequent Titles"<sup>[10]</sup> which was set for hearing on December 17, 2001.

By Order<sup>[11]</sup> of June 11, 2002, respondent denied the "Motion to Cancel Subsequent Titles" as he did deny the Motion for Reconsideration filed on July 5, 2002 by Order of January 13, 2003.<sup>[12]</sup>

Hence, arose the administrative complaint at bar, complainant alleging that respondent's acts of "swiftly grant[ing] Reyes" motion to cancel statutory lien which he earlier denied [but which he later granted] even though there was no motion for reconsideration filed to that effect" and of "act[ing] on said motion without setting the same for hearing and posting of notices of hearing in the locality where the lot is situated" constitute a complete disregard of the procedure prescribed by law and are not in accordance with the Code of Judicial Conduct.<sup>[13]</sup>

Complainant also faults respondent for violating, among other things, Section 4, Rule 37 of the 1997 Rules of Civil Procedure which provides that a motion for reconsideration shall be resolved within 30 days from the time it is submitted for resolution.<sup>[14]</sup> He invites attention to the fact that his "Motion to Cancel Subsequent Titles" was resolved only after four months following its submission for resolution while his motion for reconsideration of the June 11, 2002 Order was resolved only after five months following its submission for resolution.<sup>[15]</sup>

Finally, complainant faults respondent for grave abuse of discretion and gross ignorance of the law in denying his "Motion to Cancel Subsequent Certificates of Titles." For, given the issuance of several titles arising from respondent's June 9, 2000 Order from which complainant was able to obtain relief, complainant contends that respondent should have granted his motion.<sup>[16]</sup>

In his Comment<sup>[17]</sup> dated June 26, 2003, respondent, branding complainant as a disgruntled losing litigant, proffers that complainant had the right to appeal his order denying the "Motion to Cancel Subsequent Certificates of Titles." At any rate,

respondent argues that his questioned order and the issues raised in the complaint at bar are "judicial matters which were tackled and resolved by [him] in line with his functions as presiding judge trying and deciding the said special proceedings case, [hence,] the questioned act . . . was a judgment call and an act of judicial discretion which is the heart of the act of judging."

Respondent thus asks for the dismissal of the complaint which, so he claims, was intended purely for harassment.

The Office of the Court Administrator (OCA), by Report<sup>[18]</sup> dated October 17, 2003, finds respondent guilty of gross ignorance of the law and procedure and undue delay in rendering a decision or order and gives the following recommendation:

Respectfully submitted for the consideration of the Honorable Court is our recommendation that the present administrative complaint against Judge Agapito L. Hontanosas, Regional Trial Court, Branch 16, Cebu City be RE-DOCKETED as a regular administrative matter. Considering that respondent judge committed infractions classified as both serious and less serious charges under Rule 140 as amended, it is further recommended that he be DIRECTED to pay a FINE in the amount of Twenty Thousand Pesos (P20,000.00) with a STERN WARNING that a similar infraction in the future will be dealt with a more severe penalty. (Underscoring supplied)

By Resolution<sup>[19]</sup> of December 8, 2003, this Court required the parties to manifest whether they are submitting the case for resolution on the basis of the pleadings/records already filed.

In separate Manifestations,<sup>[20]</sup> complainant and respondent submitted the case for resolution on the basis of the pleadings/records already submitted.

This Court finds no reason to disturb the findings of the OCA.

It is a basic rule that all written motions should be heard. Excepted from this rule are non-litigious motions – those which may be acted upon by the court without prejudice the rights of the adverse party.<sup>[21]</sup>

As correctly found by the OCA, the "Motion to Cancel Statutory Lien" filed by Reyes cannot be considered a non-litigious motion to exempt it from the requirement of a hearing or notice to complainant, the lawful possessor of Lot No. 7708.

To hold a judge administratively liable for gross ignorance of the law, the assailed act must not only be contrary to existing law or jurisprudence, but must also be motivated by bad faith, fraud, dishonesty or corruption on his part.<sup>[22]</sup> This is the general rule. When, however, the law or rule is so elementary, as that which requires written motions to be heard, not knowing about it constitutes gross ignorance of the law even in the absence of malicious intent.<sup>[23]</sup>

Respecting the charge of failure to resolve the pending incidents within the required period, respondent did not deny the same or advance any reason therefor. He must thus be faulted for it.