

## EN BANC

**[ A.M. No. RTJ-16-2457 [Formerly OCA I.P.I. No. 14-4291-RTJ], February 21, 2017 ]**

**DR. RAUL M. SUNICO, IN HIS CAPACITY AS PRESIDENT OF THE CULTURAL CENTER OF THE PHILIPPINES, COMPLAINANT, VS. JUDGE PEDRO DL. GUTIERREZ PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 119, PASAY CITY, RESPONDENT.**

## DECISION

### PER CURIAM:

Before us is an Administrative Complaint<sup>[1]</sup> filed by Dr. Raul M. Sunico (*Dr. Sunico*) against respondent Judge Pedro DL. Gutierrez (*respondent Judge*), Presiding Judge, Regional Trial Court, Branch 119, Pasay City, for gross ignorance of the law, grave abuse of authority, gross neglect of duty, and violation of the New Code of Judicial Conduct, in connection to Civil Case No. R-PSY-12-10726-CV, entitled "*Felix Espiritu v. Raul Sunico, in his capacity as President of the Cultural Center of the Philippines.*"

In his Complaint<sup>[2]</sup> dated July 10, 2014, Dr. Sunico, in his capacity as the President of the Cultural Center of the Philippines (CCP), alleged that the latter entered into a five (5)-year lease contract on a property owned by CCP with Felix Espiritu (*Espiritu*), covering the period of June 16, 2007 until June 15, 2012. Thereafter, Espiritu operated his Yakitori Dori Bar and Grill Restaurant on the leased property.<sup>[3]</sup>

On April 18, 2012, the CCP management notified Espiritu that it will no longer renew the lease contract after its termination on June 15, 2012. CCP demanded that Espiritu settle his outstanding obligation.<sup>[4]</sup> Espiritu, however, expressed his interest to renew the lease contract for another five (5) years, but CCP rejected the offer. On June 19, 2012, after the expiration of the contract, CCP sent a notice of disconnection of electricity and water supply to Espiritu.<sup>[5]</sup>

On June 27, 2012, Espiritu filed a Petition for Specific Performance<sup>[6]</sup> to fix the lease period, injunction and damages before the sala of respondent Judge Gutierrez, who was then on leave.<sup>[7]</sup> Vice-Executive Judge Wilhelmina J. Wagan denied the application for a 72-hour TRO.<sup>[8]</sup> On July 3, 2012, pairing Judge Rowena Nieves Tan also denied the application for issuance of a 20-day TRO for lack of merit.<sup>[9]</sup> Meanwhile, CCP disconnected the electric and water supplies in the subject premises.<sup>[10]</sup>

On July 24, 2012, Espiritu filed an *Ex Parte* Manifestation with Motion for Reconsideration and *Status Quo Ante* Order<sup>[11]</sup> which was set for hearing on July 27, 2012. Dr. Sunico claimed that CCP received the copy of the Manifestation/Motion only on August 2, 2012.<sup>[12]</sup> Dr. Sunico alleged that despite the violation of the three

(3)-day notice rule, respondent Judge Gutierrez issued an Order dated July 27, 2012 directing CCP to file its comment/opposition within (5) days from notice.<sup>[13]</sup> CCP received the Order on August 22, 2012 and had until August 28, 2012 to file its comment (August 27, 2012 was a non-working holiday). Due to time constraints, CCP asked for extension of time, or until September 7, 2012, to file its comment.<sup>[14]</sup> However, on August 28, 2012, Dr. Sunico lamented that, without waiting for their comment/opposition which was filed within the requested period of extension, respondent judge immediately issued an Order resolving the motion in favor of Espiritu.<sup>[15]</sup>

CCP moved for reconsideration of the Order dated August 28, 2012 but was denied. Dr. Sunico alleged that respondent judge was partial and that he also violated CCP's right to procedural due process when he resolved Espiritu's motion without awaiting for CCP's comment/opposition.<sup>[16]</sup>

After hearing, respondent judge issued an Order dated September 25, 2012 granting Espiritu's motion for the issuance of preliminary injunction.<sup>[17]</sup> A writ of preliminary injunction was issued on September 28, 2012 after posting of bond.<sup>[18]</sup> On October 10, 2012, Dr. Sunico filed a Motion for Reconsideration of the Order and for the Dissolution of the Writ of Preliminary Injunction.<sup>[19]</sup> To expedite the proceedings, CCP filed a Manifestation with Extremely Urgent Motion for Early Resolution of its Motion for Reconsideration<sup>[20]</sup> dated December 13, 2012. Dr. Sunico claimed that respondent judge failed to act on the motion despite the lapse of more than three (3) months from the time of the filing to resolve.<sup>[21]</sup> On March 6, 2013, CCP filed another Reiterative Motion for Speedy Resolution of the Motion for Reconsideration.<sup>[22]</sup>

Finally, after more than 5 months, respondent judge denied Dr. Sunico's motion for reconsideration in an Order dated April 1, 2013. Dr. Sunico resented that the said order is a mere one-page document with three (3) short paragraphs which failed to explain how respondent judge arrived at said order. Dr. Sunico, likewise, claimed that the "apathetic" and "nail-pace" actions of respondent judge to CCP's motion fostered suspicion on his impartiality.<sup>[23]</sup>

On May 17, 2013, Dr. Sunico sought respondent judge's inhibition. During the hearing, respondent judge stated that Dr. Sunico's motion was improper, since *certiorari* was the better remedy. He also asked Dr. Sunico if it was possible to give Espiritu an extension of the lease contract. Meanwhile, on June 27, 2013, Dr. Sunico filed a Petition for *Certiorari* of the Orders dated September 25, 2012 and April 1, 2013 before the Court of Appeals (CA), docketed as CA-G.R. SP No. 130529.<sup>[24]</sup>

After four (4) months from the filing of the motion for inhibition, respondent judge issued an Order<sup>[25]</sup> dated September 26, 2013 stating that he shall inhibit from the case provided that the petition for *certiorari* before the CA is granted and that he is found to have gravely abused his discretion in issuing the writ of preliminary mandatory injunction.

In a Decision<sup>[26]</sup> dated November 11, 2013, the CA found respondent judge Gutierrez gravely abused his discretion in issuing the Orders dated September 25,

2012 and April 1, 2013. The appellate court stated that Espiritu was not entitled to a writ of preliminary injunction since there was no showing that he had a clear and unmistakable right that must be protected.

Consequently, Dr. Sunico reiterated its motion for respondent judge's inhibition. In an Order<sup>[27]</sup> dated January 15, 2014, respondent judge deferred his inhibition until the resolution of the Motion for Reconsideration filed by Espiritu before the CA. The CA denied the motion for reconsideration in a Resolution dated March 10, 2014 for lack of merit. However, notwithstanding the denial by the CA of Espiritu's motion for reconsideration, respondent judge refused to recuse himself from the case.<sup>[28]</sup>

On April 29, 2014, Espiritu filed a Petition for Review on *Certiorari* before the Supreme Court (SC). Meanwhile, CCP fenced certain areas of the subject property within its perimeter but excluded the subject leased premises. Espiritu misinterpreted CCP's action as violative of the *status quo ante* issued by respondent judge on August 28, 2012. Hence, Espiritu filed an *Ex Parte* Manifestation with Motion for Issuance of Show Cause Order against CCP.<sup>[29]</sup>

On May 9, 2014, Espiritu filed a Supplemental Motion for Removal of Fence, which was set for hearing on May 13, 2014. Dr. Sunico filed a reiterative *Ex-Parte* Motion for Immediate Inhibition of respondent judge. During the hearing, the Motion for Issuance of Show Cause Order and the Supplemental Motion filed by Espiritu were simultaneously heard. Complainant Dr. Sunico assailed the actions of respondent judge in entertaining Espiritu's motions. Furthermore, respondent judge urged the parties to forge a compromise to remove the fence.<sup>[30]</sup>

On June 2, 2014, Dr. Sunico filed a Consolidated Opposition to the Motions of Espiritu with Fourth Reiteration of its motion for respondent judge's inhibition.<sup>[31]</sup>

In an Order dated June 4, 2014, respondent judge Gutierrez ruled as follows:

WHEREFORE, premises considered, the Court hereby rules as follows:

- a. Petitioner's motion for issuance of show cause Order is granted and hence gives respondent Raul Sunico to explain in writing within fifteen (15) days from receipt hereof why he should not be cited for contempt;
- b. Petitioner's motion for removal of fence is also granted and respondent through its officers are ordered to remove all the fences around the leased premises of petitioner within twenty-four (24) hours from receipt hereof under pain of contempt of court for failure to comply with the same or referral to the Ombudsman upon complaint of petitioner; and
- c. The motion to inhibit filed by respondent is denied for lack of merit.<sup>[32]</sup>

On June 5, 2014, CCP filed a Motion for Reconsideration with Fifth Reiterative Motion for Inhibition.<sup>[33]</sup> Complainant Dr. Sunico insisted that respondent judge has been partial from the very start. He ordered the removal of the fence which was outside

the subject leased premises and even inspected the property without CCP's knowledge or presence, and continued to hear the case apparently to accommodate and protect Espiritu.

On August 14, 2014, the Office of the Court Administrator (OCA) resolved to require respondent judge to file his comment relative to the complaint filed against him.<sup>[34]</sup>

On November 25, 2014, acting on the fifth reiterative prayer for his inhibition and motion for reconsideration, respondent judge resolved to grant the motion for inhibition.<sup>[35]</sup>

In his Comment<sup>[36]</sup> dated November 26, 2014, respondent judge categorically denied the allegations against him. He asserted that the assailed writ and orders were issued in the exercise of his judicial function, based on his appreciation of the facts, and within the bounds of the law and established jurisprudence. He opined that he cannot be subjected to civil, criminal or administrative liability for any official acts he did no matter how erroneous they are as long as he acted in good faith.<sup>[37]</sup>

Respondent judge explained that considering the urgency of the matter, *i.e.*, disconnection of the utilities that hamper the operation of Espiritu's business on the leased premises, he was then duty-bound to immediately rule on the matter which was why he granted the injunction. He opted not to discuss the assailed orders considering that these are the subject of *certiorari* proceedings before the CA and the SC.<sup>[38]</sup>

Respondent judge further averred that complainant filed the instant administrative complaint to coerce him to inhibit from further trying the case, which he had already granted.<sup>[39]</sup>

Meanwhile, in separate cases, A.M. No. RTJ-04-1858, respondent judge was found guilty of simple misconduct and he was fined Php20,000.00. In another administrative case, A.M. No. RTJ-08-2157, respondent judge was reprimanded for poor ethical judgment and for failure to uphold the dignity of the court.<sup>[40]</sup>

In a Memorandum<sup>[41]</sup> dated January 20, 2016, the OCA found respondent judge guilty of gross ignorance of the law, undue delay and manifest bias and partiality and recommended that he be fined in the amount of P40,000.00 and be sternly warned. It likewise recommended that the complaint be redocketed as a regular administrative complaint against respondent judge.

Meanwhile, on December 9, 2016, respondent judge Gutierrez compulsorily retired.

## **RULING**

We concur with the findings of the OCA, except as to the imposable penalty.

### ***On the charge of undue delay in rendering a decision or order:***

In the instant case, records show that on October 12, 2012, CCP filed a motion for reconsideration and for the dissolution of the writ of preliminary injunction.<sup>[42]</sup> On

the same date, respondent judge gave Espiritu the opportunity to file comment/opposition, and CCP to file a reply from receipt of Espiritu's comment/opposition, which upon submission was deemed submitted for resolution.

[43] On December 13, 2012, Espiritu filed his Comment, while on November 26, 2013, CCP filed its Manifestation with Extremely Urgent Motion for Resolution. In the same manifestation, CCP informed the trial court that it would no longer file a reply, and moved for the early resolution of its motion for reconsideration.[44] Notwithstanding that the matter had already been submitted for resolution upon submission of CCP's manifestation/motion, respondent judge continued with the proceedings by setting the case for preliminary and pre-trial conference on April 4, 2013. On March 6, 2013, CCP filed anew a reiterative urgent motion for speedy resolution. Respondent judge Gutierrez resolved the motion only on April 1, 2013.

[45] Respondent judge did not provide any reason for his delay in resolving the said motion.

A Motion for reconsideration of an interlocutory order should be resolved within a reasonable length of time in view of its urgency, and not the 90-day period in the Constitution.[46] Otherwise, the issue in question may become moot and academic. In this particular case, there was an urgent need to resolve the motion in order to remove any doubt on Espiritu's entitlement to a preliminary injunction. In sum, the unexplained delay of respondent judge in resolving the motion is inexcusable, unwarranted and unreasonable. An inexcusable failure to decide a case or motion constitutes gross inefficiency, warranting the imposition of administrative sanctions such as suspension from office without pay or fine on the defaulting judge.[47]

*On the charge of gross ignorance of the law:*

Respondent judge contend that Dr. Sunico should have resorted to judicial remedies first. He added that he cannot be held liable for gross ignorance of the law for issuing the writ of preliminary mandatory injunction in favor of Espiritu since it was done in the exercise of his judicial functions.

We are unconvinced.

It must likewise be emphasized that Dr. Sunico indeed elevated the assailed orders of respondent judge before the CA in CA-G.R. SP No. 130529. In fact, the appellate court already ruled that respondent judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the subject injunctive writ against CCP for having no basis in fact or in law. The pertinent discussion in the decision of the CA is noteworthy, to wit:

In the present case, we find that private respondent Espiritu is not entitled to a writ of preliminary mandatory injunction since there is no showing that he has a clear and unmistakable right that must be protected.

It is a deeply ingrained doctrine in Philippine remedial law that a preliminary injunctive writ under Rule 58 issues only upon a showing of the applicant's "clear legal right" being violated or under threat of violation by the defendant. "Clear legal right," within the meaning of Rule 58, contemplates a right "clearly founded in or granted by law." Any hint