

FIRST DIVISION

[A.M. No. RTJ-16-2467 (Formerly OCA IPI No. 14-4308-RTJ), October 18, 2017]

**ATTY. EDDIE U. TAMONDONG, PETITIONER, V. JUDGE
EMMANUEL P. PASAL, PRESIDING JUDGE, BRANCH 38,
REGIONAL TRIAL COURT, CAGAYAN DE ORO CITY, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an administrative complaint^[1] for gross ignorance of the law, gross incompetence, gross inefficiency and/or neglect of duty filed by Atty. Eddie U. Tamondong (Atty. Tamondong) against Judge Emmanuel P. Pasal (Judge Pasal), Presiding Judge of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 38, relative to Special Civil Action No. 2013-184, entitled *Henmar Development Property, Inc. v. Judge Michelia O. Capadocia, Judge, Municipal Trial Court in Cities, Opal, Misamis Oriental and Heirs of Enrique Abada represented by his wife and children, et al.*

The antecedent facts of the instant administrative complaint are recounted below.

On June 21, 2012, the heirs of Enrique Abada (Abada's heirs), represented by his wife and children, filed a case for Quieting of Title, Recovery of Possession, Annulment of Transfer Certificate of Title (TCT) No. T-33060, and Annulment of Extrajudicial Settlement of Estate with Sale, before the Municipal Trial Court in Cities (MTCC) of Opol, Misamis Oriental, against Atty. Tamondong's client, Henmar Development Property Inc. (Henmar), docketed as Civil Case No. 2012-06-04. Subsequently, Henmar, through Atty. Tamondong, filed an Omnibus Motion (*Ad Cautelam*) which prayed for, among other reliefs, the dismissal of the complaint based on the following grounds: (a) lack of jurisdiction over the person of Henmar; (b) lack of jurisdiction over the subject matter and/or improper venue; and (c) prescription and/or laches. In an Order dated March 26, 2013, the MTCC denied the motion to dismiss of Henmar. Henmar filed a Motion for Reconsideration but it was also denied by the MTCC in an Order dated July 4, 2013.

Aggrieved, Henmar filed a Petition for *Certiorari*, Prohibition, and Preliminary Injunction with Prayer for Issuance of a Temporary Restraining Order (TRO)^[2] before the RTC, docketed as Special Civil Action No. 2013-184. The case was raffled to Branch 38, presided by Judge Pasal.

On December 23, 2013, Judge Pasal issued a Resolution^[3] dismissing the Petition for lack of merit, for the following reasons:

This court holds that the denial of the dismissal by the public respondent falls short of the foregoing to justify the issuance of the extraordinary writ of certiorari and prohibition.

On the first ground, the public respondent acted well within her jurisdiction when she ruled that summons was validly served and jurisdiction over the person of Henmar was validly obtained. True, the 1997 Rules on Civil Procedure enumerates specific persons who may validly receive summons for or on behalf of corporations. In the case of *E.B. Villarosa and Partner Co., Limited vs. Herminia I. Benito, et al.* (G.R. No. 136426, August 6, 1999) the Supreme Court emphasized that the list of persons who validly receive summons for a corporation is exclusive and should be strictly followed. However, this is but one side of the jurisprudential spectrum in the interpretation and application on the rule of service of summons on corporations. On the other side of the spectrum is the opinion of Justice Regalado (p. 225, *Remedial Law Compendium Volume 1, 6th ed.*) that service of summons to a secretary who is not the official corporate secretary is binding on the corporation when the same is seasonably received by the corporation. Said opinion became a binding precedent when the same was integrated by the Supreme Court in its ruling in the case of *BPI vs. Sps. Santiago* (G.R. No. 169116, March 28, 2007). It thus appears that the strict interpretation of the rule on service of summons to corporations espoused by the earlier *E.B. Villarosa* case has been modified by the subsequent *BPI* case where the Supreme Court went as far as to pronounce that "there is no hard and fast rule pertaining to the manner of service of summons". The law therefore gives sufficient latitude for judges to exercise discretion in determining whether there was valid service of summons.

Whether or not there were sufficient grounds to declare substantial compliance is irrelevant in a certiorari proceeding as this is not an error of jurisdiction but an error of law which is a proper subject for appeal. Even assuming that the requirements for substantial compliance of service of summons were not present, there is no showing that the public respondent acted arbitrarily or despotically.

On the second ground, petitioner points out that jurisdiction over the case lies outside of the territorial jurisdiction of respondent court which is limited to the Municipality of Opol. The property involved in this case is described in the title and the decree as located in Iponan which is part of the city of Cagayan de Oro. This argument however conveniently ignores the fact, which the public respondent took judicial notice of that the title and the decree refer to a cadastral survey conducted in 1933 when the Municipality of Opol was not yet in existence. It was only in 1950 that Opol came into existence. A trial is therefore necessary to determine the political boundaries of said new municipality and determine whether the subject property lies within the court's jurisdictional borders.

Finally, on the issue of prescription, jurisprudence has established that an action for reconveyance based on fraud is imprescriptible when the plaintiff is in actual possession of the property (*Leyson et. al. vs. Bontuyan, et. al.*, G.R. No. 156357). In this case, private respondents alleged that they were in actual possession of the property until they were ousted from the same in 2008. Prescription therefore commenced to run only in 2008. Since the present action was filed in 2012, the action has not yet prescribed.

Henmar filed a Motion for Reconsideration^[4] of the foregoing Resolution, and Abada's heirs filed their Opposition/Comment to the Motion for Reconsideration.^[5]

In an Order^[6] dated February 24, 2014, Judge Pasal deemed the Motion for Reconsideration of Henmar as already submitted for resolution. However, even after more than six months, Judge Pasal had yet to resolve the said Motion.

Hence, Atty. Tamondong initiated the instant administrative complaint charging Judge Pasal with gross ignorance of the law and/or gross incompetence.

Atty. Tamondong contends that Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 is legally erroneous, insisting that: (a) the MTCC has not acquired jurisdiction over the person of Henmar as the summons was improperly served on the clerical/secretarial staff of another corporation, the Radio Mindanao Network, Inc.; (b) the MTCC does not have jurisdiction over the subject property because said property is located in Cagayan de Oro City and not in the Municipality of Opol; and (c) Henmar has been in possession of the subject property, plus, the document/agreement which Abada's heirs seek to enforce against Henmar had been executed on April 22, 1968, so the complaint filed by Abada's heirs before the MTCC only in 2013 is already beyond the 10-year prescriptive period under the Civil Code for filing an action based on a written contract. Atty. Tamondong asserts that Judge Pasal, in ruling against Henmar and dismissing its Petition, showed gross and manifest ignorance and incompetence; and also Judge Pasal, "with all his too glaring, unfounded and unjustified rejection of the factual and legal grounds"^[7] raised by Henmar in its Petition, was unduly favoring Abada's heirs.

In addition, Atty. Tamondong questions Judge Pasal's failure to seasonably act on and resolve the Motion for Reconsideration of Henmar and avers that Judge Pasal's inaction on said Motion for more than six months constituted gross inefficiency and/or gross neglect of duty.

In his Comment,^[8] Judge Pasal invites attention to his Resolution dated December 23, 2013 in Special Civil Action No. 2013-184, which he claims to be self-explanatory as it amply cites the applicable rule, jurisprudence, and opinion of an eminent author. Judge Pasal also points out that the act Atty. Tamondong complains of, *i.e.*, the dismissal of the Petition in Special Civil Action No. 2013-184, is judicial in nature and, in fact, Atty. Tamondong has already elevated the same before the Court of Appeals. Judge Pasal lastly reasons that the exercise of one's judicial discretion in accordance with law, no matter how unfavorable it might be to a party, does not constitute gross ignorance of the law.

Atty. Tamondong filed a Reply to Comment^[9] reiterating the supposed flaws in Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184. According to Atty. Tamondong, there is no dispute as to the authorities cited by Judge Pasal in said Resolution and the only problem is the absence of facts and/or evidence for their application. Atty. Tamondong further argues that the appeal of Judge Pasal's Resolution before the Court of Appeals is not a barrier to the present administrative complaint against Judge Pasal since these two remedies can proceed independently and be resolved separately from one another. The administrative complaint concerns Judge Pasal's fitness to remain in the Judiciary and not the merits of Special Civil Action No. 2013-184. Atty. Tamondong additionally alleges

that by being completely mum on the matter, Judge Pasal has impliedly admitted his failure to timely resolve the Motion for Reconsideration of Henmar.

The Office of the Court Administrator (OCA), through Deputy Court Administrator Raul Bautista Villanueva, submitted a Memorandum^[10] dated June 7, 2016, recommending as follows:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

- a. The instant administrative complaint against Presiding Judge Emmanuel P. Pasal, Branch 38, Regional Trial Court, Cagayan de Oro City, be **RE-DOCKETED** as a regular administrative matter;
- b. Respondent Judge Pasal be found **GUILTY** of gross inefficiency and/or neglect of duty arising from undue delay in resolving a motion and be **FINED** in the amount of Two Thousand Pesos (PhP2,000.00) with a **WARNING** to be more punctilious in the observance of the reglementary periods for resolving pending motions in his court as a repetition of the same infraction shall be dealt with more severely; and
- c. The charge of gross ignorance of the law against respondent Judge Pasal is **DISMISSED** for being judicial in nature and for lack of merit.

The Court, in a Resolution^[11] dated August 17, 2016, resolves, among other matters, to re-docket the instant administrative complaint as a regular administrative matter.

In their respective Manifestations,^[12] the parties agree to already submit the administrative complaint for resolution based on the pleadings filed.

The Court fully adopts the findings and recommendations of the OCA.

***On the charge of gross ignorance
and/or gross incompetence***

There is no merit in Atty. Tamondong's charge of gross ignorance of the law and/or gross incompetence against Judge Pasal.

Atty. Tamondong's sole basis for his charge is Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 dismissing the Petition for *Certiorari* and Prohibition which Atty. Tamondong filed on behalf of his client, Henmar. In said Resolution, Judge Pasal determined that there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in denying the motion to dismiss of Henmar in Civil Case No. 2012-06-04. Atty. Tamondong though is adamant that the MTCC should have dismissed the complaint of Abada's heirs against Henmar in Civil Case No. 2012-06-04 on the grounds of (a) lack of jurisdiction over the person of Henmar; (b) lack of territorial jurisdiction over the subject property; and (c) lack of jurisdiction over a prescribed action.

Judge Pasal issued the Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 in the exercise of his adjudicative functions, and any errors he might