

EN BANC

[IPI No. 12-203-CA-J [formerly A.M. No. 12-8-06-CA], December 10, 2013]

RE: LETTERS OF LUCENA B. RALLOS, FOR ALLEGED ACTS/INCIDENTS/OCCURENCES RELATIVE TO THE RESOLUTION(S) ISSUED IN CA-G.R. SP No. 06676 BY COURT OF APPEALS EXECUTIVE JUSTICE PAMPIO ABARINTOS and ASSOCIATE JUSTICES RAMON PAUL HERNANDO and VICTORIA ISABEL PAREDES.

[A.M. No. 12-9-08-CA]

RE: COMPLAINT FILED BY LUCENA B. RALLOS AGAINST JUSTICES GABRIEL T. INGLES, PAMELA ANN MAXINO, and CARMELITA S. MANAHAN.

D E C I S I O N

BERSAMIN, J.:

Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.

Antecedents

In Civil Case No. CEB-20388 of the Regional Trial Court in Cebu City (RTC), the Heirs of Vicente Rallos, one of whom is complainant Lucena B. Rallos (Rallos), and other parties collectively referred to as Vicente Rallos, *et al.* sought just compensation from the city government of Cebu City (Cebu City) for two parcels of land pertaining to the estate that Cebu City had been maintaining as public roads without their consent. On January 14, 2000, the RTC (Branch 9) rendered its decision holding Cebu City liable to pay just compensation to the Heirs of Vicente Rallos, *et al.*; and directing the creation of a board of commissioners that would determine the amount of just compensation.^[1] Cebu City sought the reconsideration of the decision, but its motion was denied.^[2]

Upon submission by the board of commissioners of its report on the just compensation, the RTC rendered another decision on July 24, 2001 ordering Cebu City to compensate the Heirs of Vicente Rallos, *et al.* in the amount of P34,905,000.00 for the parcels of land plus interest of 12% *per annum* computed from the date of the decision until fully paid; P50,000.00 as attorney's fees; and P50,000.00 as litigation expenses.^[3]

The RTC granted the motion of the Heirs of Vicente Rallos, *et al.* for the execution pending appeal of the July 24, 2001 decision. In implementing the execution pending appeal, the RTC issued three separate orders, all dated December 21, 2001.

Both parties sought the reconsideration of the orders dated December 21, 2001.^[4] On March 21, 2002, the RTC issued its consolidated order resolving the motions for reconsideration of the parties.^[5]

Both parties appealed to the Court of Appeals (CA), Visayas Station. The Heirs of Vicente Rallos, *et al.* assailed the July 24, 2001 decision and the March 21, 2002 consolidated order of the RTC. On its part, Cebu City challenged the decisions of January 14, 2000, July 24, 2001, and March 21, 2002.

On May 29, 2007, the CA promulgated its decision dismissing the appeal of Cebu City for its failure to file a record on appeal.^[6] Cebu City moved for a reconsideration, but the CA denied its motion in the resolution promulgated on August 30, 2007. Thence, Cebu City filed its petition for review in this Court (G.R. No. 179662), but the Court denied the petition for review.^[7]

The Heirs of Vicente Rallos, *et al.* thereafter moved in the RTC for the execution of the July 24, 2001 decision and the March 21, 2002 consolidated order. The RTC granted the motion. Subsequently, however, upon finding that the RTC had erred in executing the decision and the consolidated order, the Heirs of Vicente Rallos, *et al.* lodged an appeal with the CA, Visayas Station, to compel the RTC to comply strictly with the tenor of the decision and the consolidated order (CA-G.R. CEB SP. No. 04418).

On June 11, 2010, the CA decided CA-G.R. CEB SP. No. 04418 by requiring the RTC to execute the RTC's July 24, 2001 decision and its March 21, 2002 consolidated order strictly in accordance with their tenor.^[8] After its motion for reconsideration was denied, Cebu City appealed by petition for review (G.R. No. 194111). However, the Court denied Cebu City's appeal on December 6, 2010.^[9]

On motion for execution by the Heirs of Vicente Rallos, *et al.*, the RTC directed on September 23, 2011 the issuance of a writ of execution in accordance with the ruling in CA-G.R. CEB SP. No. 04418.^[10] In reaction, Cebu City presented an omnibus motion to quash the writ of execution and to lift the notice of garnishment, but the RTC denied the omnibus motion through its orders of October 26, 2011,^[11] January 26, 2012,^[12] and February 27, 2012.

On March 26, 2012, Cebu City brought in the CA, Visayas Station, a petition for the annulment of the RTC's decisions of January 14, 2000 and July 24, 2001, and the consolidated order dated March 21, 2002 (CA-G.R. CEB SP. No. 06676), alleging that Vicente Rallos and his heirs had been obliged under a compromise agreement called *convenio*, as approved on October 18, 1940 by the Court of First Instance of the Province of Cebu (CFI) in Civil Case No. 616 and Civil Case No. 626, to donate, cede, and transfer the parcels of land in question to Cebu City; that Cebu City should not be made to pay just compensation for the parcels of land in question despite the final and executory decision in Civil Case No. CEB-20388 because of the ruling by the CFI in Civil Case No. 616 and Civil Case No. 626 to the effect that the parcels of land in question had been donated to Cebu City; and that the concealment of the existence of the *convenio* by the Heirs of Vicente Rallos, including Rallos, during the proceedings in Civil Case No. CEB-20388 constituted extrinsic fraud, which was "unmasked" only when Cebu City discovered the

existence of the *convenio* in 2011.^[13] Accordingly, Cebu City sought the nullification of the RTC decisions and consolidated order; and the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction “to prevent the hasty, if not unlawful release of government funds.”^[14]

CA-G.R. CEB SP. No. 06676 was raffled to the 18th Division of the CA, Visayas Station, whose members then were respondents Justice Pampio A. Abarintos, as the Chairman, Justice Ramon Paul L. Hernando, as the Senior Member, and Justice Victoria Isabel A. Paredes, as the Junior Member.^[15] On March 28, 2012, the 18th Division, through Justice Hernando, promulgated a resolution directing Cebu City to rectify certain defects in its petition, to wit:

Perusal of the above-captioned Petition for Annulment of Final Decision/s and Order/s, with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), reveals the following infirmities:

1. Copy of Sangguniang Panlungsod Resolution No. 12-1330-2011 that is attached to the Petition, while ostensibly a certified true copy, is in fact just a photocopy.
2. Atty. Joseph L. Bernaldez, the Notary Public in both the Verification/Certification of Non-Forum Shopping and Affidavit of Good Faith, did not indicate therein his notarial commission number and the province/city where he is commissioned, in violation of Sec. 2, Rule VIII of the 2004 Rules on Notarial Practice.
3. Atty. Marie Velle P. Abella, the Notary Public in the Affidavit of Service did not reflect therein the province/city where she is commissioned as a notary public, in violation of Sec. 2, Rule VIII of the 2004 Rules on Notarial Practice.

Petitioner is **DIRECTED** to **RECTIFY** the foregoing defects within ten (10) days from notice. Meanwhile, the Court shall hold in abeyance any action on the Petition and TRO application pending compliance with the order of rectification of defects.^[16]

Cebu City complied with the resolution on April 12, 2012.^[17]

Through the *Manifestation with Urgent Motion for the Issuance of a Temporary Restraining Order* filed on April 4, 2012, Cebu City informed the CA of its receipt of the *Notice to Parties of Sale on Execution* that set the sale on April 10, 2012 and April 17, 2012; and alleged that the sale on execution could render the proceedings in CA-G.R. CEB SP. No. 06676 moot and academic.^[18]

Acting on the aforesaid urgent motion of Cebu City, the CA, through Justice Hernando, issued a TRO on April 13, 2012, *viz*:

Proceeding now to the supplication for the issuance of a Temporary Restraining Order (TRO) by the petitioner, the Court perceives more than adequate grounds for its grant. Firstly, is there urgency involved on the matter, as an execution sale has been scheduled not just on April 10,

2012 but also on April 17, 2012. Secondly, if such sale pushes through, it may well render moot the proceedings before this Court. Thirdly, there appears, at least preliminarily, a right on the part of petitioner that needs protection, that is, its right not to be deprived of its property if the fraud it alleges – that of concealment of the *convenio* – is unmasked to be such. Thus, grave or irreparable injury may therefore be suffered, in Our estimation at this stage of the proceedings, by the petitioner should a TRO be not forthcoming.

The Court now therefore resolves to **GRANT** the petitioner's application for a TRO, effective for sixty (60) days from notice by respondents. By virtue of the TRO, the respondents or anyone acting in their behalf, are enjoined from executing the Decision dated January 14, 2000 and July 24, 2001, the Order dated February 9, 2001, Consolidated Order dated December 21, 2001 and Order dated February 27, 2012 of respondent court, the Regional Trial Court, Branch 9 of Cebu City and from causing the release of any funds of the petitioner in satisfaction thereof.

Petitioner is **DIRECTED** to post the corresponding TRO Bond, herein fixed at Php 1 Million, within ten (10) days from notice. The TRO issued by the Court shall be effective immediately upon receipt by respondents. However, the failure of the petitioner to comply with the posting of the bond within the ten-day period shall result in the lifting of the restraining order.^[19]

Cebu City posted the required TRO bond of P1,000,000.00.^[20]

On April 23, 2012, Justice Hernando inhibited from further participation in CA-G.R. CEB SP. No. 06676.^[21] During the raffle of April 24, 2012, CA-G.R. CEB SP. No. 06676 was assigned to Justice Paredes, with Justice Gabriel T. Ingles being designated as the new third member.^[22]

On April 26, 2012, the CA set the hearing on Cebu City's application of the writ of preliminary injunction on May 23, 2012.^[23]

On May 7, 2012, the Heirs of Vicente Rallos moved to set aside the April 13, 2012 resolution; to lift the TRO; and to dismiss the petition for annulment.^[24]

On May 23, 2012, the CA held the hearing on Cebu City's application for the writ of preliminary injunction. The counsels for both parties attended the hearing, where the Heirs of Vicente Rallos moved to be allowed to submit their formal offer of exhibits in support of their opposition to the issuance of the writ of preliminary injunction. The CA granted their motion, and further directed the parties to submit their respective memoranda.^[25]

On June 5, 2012, CA-G.R. CEB SP. No. 06676 was assigned to Justice Abarintos in view of the intervening transfer of Justice Paredes to Manila.^[26] However, two days later, Justice Abarintos inhibited himself from further participation in CA-G.R. CEB SP. No. 06676.^[27]

By the raffle conducted on June 7, 2012, CA-G.R. CEB SP. No. 06676 was next assigned to Justice Edgardo L. Delos Santos, while Justice Carmelita S. Manahan was designated as the new third member of the Division.^[28] On June 14, 2012, however, Justice Delos Santos also inhibited himself from participation in the case.^[29] Thus, CA-G.R. CEB SP. No. 06676 was assigned by raffle to Justice Ingles, who was designated as the Chairman of the 18th Division for purposes of the case. Justice Pamela Ann Abella Maxino and Justice Manahan were assigned, respectively, as the Senior and the Junior Members of the Division.^[30]

On June 26, 2012, the CA granted Cebu City's application for the writ of preliminary injunction, to wit:

x x x x

A writ of preliminary injunction issues to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole office is to preserve the status quo until the merits of the case can be heard fully. To be entitled to a writ of injunction, a party must establish the following requisites: (a) the right of the complainant is clear and unmistakable; (b) the invasion of the right sought to be protected is material and substantial; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

We find the foregoing requisites satisfied.

First, the initial evidence satisfactorily demonstrates petitioner's clear and unmistakable right as a beneficiary or prospective donee in a *Convenio* executed on September 22, 1940. Petitioner submitted as exhibit in its application for WPI, the Decision of the Court of First Instance of the Province of Cebu, 8th Judicial District dated October 18, 1940. The Decision reproduced *verbatim* the judicially-approved *Convenio*, which provided for a stipulation *pour autrui* in petitioner's favor, whereby Lots 485-D and 485-E, the subjects of Civil Case No. CEB-20388, were supposed to be donated and transferred to it by respondent's predecessor, Father Vicente Rallos. The *Convenio* also provided that should petitioner not accept the donation, the road lots would still be for public use.

Respondents question the authenticity of the Decision embodying the *Convenio* since the same is purportedly unsigned. This challenge shall be fully contended with when we evaluate the merits of the petition, but at this juncture, suffice it to say that our inclination to regard the Decision as authentic, for purposes of resolving the propriety of the herein ancillary remedy, is anchored on these reasons: (1) the 1940 decision is more than thirty (30) years old; and (2) it was produced from a custody in which it would be naturally found if genuine. Respondents' counsel, Atty. Glenn Cañete, admitted during the hearing that he personally went to RTC Branch 9, and found out for himself that indeed, there is a copy of the said Decision in the records of the court. Moreover, respondent Maurillo Rallos, likewise, attested in his Affidavit that he personally went