

SECOND DIVISION

[A.M. No. RTJ-10-2241[Formerly OCA I.P.I. No. 09-3224-RTJ], March 09, 2011]

FERDINAND C. BACOLOT, COMPLAINANT, VS. HON. FRANCISCO D. PAÑO, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 93, SAN PEDRO, LAGUNA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before this Court is a Complaint^[1] dated July 7, 2009, wherein complainant Ferdinand C. Bacolot (complainant) charged Hon. Francisco D. Paño, Presiding Judge of Branch 93, Regional Trial Court, San Pedro, Laguna with Grave Misconduct, Gross Neglect of Duty and Dereliction of Duty relative to Civil Case No. SPL-0819 entitled *Teresita Gallardo, et. al. v. Prudential Bank, et.al.* for Annulment of Mortgage and Foreclosure Sale with Prayer for Cancellation of Title and Reconveyance of Property.

The antecedent facts are as follows:

Bacolot is the cousin of Edmund B. Gallardo, plaintiff in the above-mentioned civil case, whom the latter has authorized, by a Special Power of Attorney, to file the instant administrative complaint against Judge Paño.

Bacolot narrated that on June 17, 2005, during trial of the civil case, plaintiffs, through counsel, filed a formal offer of evidence. Thereafter, defendant, after presentation of evidence, manifested that they have no more witness to present. Thus, Judge Paño issued an Order dated September 30, 2005 which reads:

Atty. Arnel Rivera manifested that he has no more witness to present, therefore, he rested his case and move that he be allowed to file a formal offer of evidence to which Atty. Ferdinand Baylon interposed no objection thereto and the latter is given ten (10) days from receipt of the same to file his Comment thereto.

SO ORDERED.

Defendant failed to file his formal offer of evidence. However, Bacolot complained that Judge Paño, instead of ordering the case as submitted for decision, issued an Order resetting the hearing of the case to another date.

On February 28, 2006, plaintiffs filed a Manifestation with Motion, praying that the case be submitted for decision since defendants have already waived their right to file a formal offer of evidence.

On May 29, 2006, Judge Paño, instead of resolving Bacolot's Manifestation with Motion, reset the hearing to August 11, 2006 allegedly upon motion of defendant's counsel.

On September 4, 2006, counsel for the defendant filed a Motion to Recall Witness, alleging that their former counsel inadvertently failed to have some documents identified by their first witness and prayed for the recall of said witness.

On September 23, 2008, plaintiffs requested the early resolution of the case since the case has already been pending for six (6) years. On October 30, 2008, plaintiffs also filed their Comment on the Motion to Recall Witness.

On November 10, 2008, or more than two (2) years since the filing of defendant's motion to recall witness, Judge Paño granted the motion and allowed defendant to recall its first witness and set the hearing to December 11, 2008.

Feeling aggrieved, Bacolot, in behalf of plaintiff Gallardo, filed the instant administrative complaint.

Bacolot asserted that on September 30, 2005, defendant already rested his case and moved for allowance to file a formal offer of evidence. Defendant failed to file his formal offer of evidence. Consequently, Bacolot insisted that Judge Paño should have submitted the case for decision upon defendant's failure to make the formal offer. Bacolot complained that Judge Paño, instead of ordering the case to be submitted for resolution, *motu proprio* set another hearing for the presentation of defendant's next witness even if he knew that there were no more witnesses to be presented. Such actuation of Judge Paño, Bacolot asserted, constitutes grave misconduct.

Moreover, Bacolot added that Judge Paño is likewise guilty of gross neglect of duty for the very long delay of two (2) years in resolving defendant's motion to recall witness.

Finally, for failing to install measures for the efficient delivery and/or mailing of court processes, resulting in the repeated postponement of hearings, Bacolot claimed that Judge Paño is likewise guilty of dereliction of duty.

On July 22, 2009, the Office of the Court Administrator (OCA) directed Judge Paño to comment on the charges against him.

In his compliance dated November 3, 2009, Judge Paño posited that the grant or denial of a motion to recall witness is discretionary on the part of the court. Judge Paño maintained that the matter is judicial in nature, and the proper recourse of complainant if they feel aggrieved was through legal means and not the filing of an administrative complaint.

With regard to the allegation of delay in the resolution of the motion to recall witness, Judge Paño explained that the delay was due to the fact that there was no proof that plaintiffs received a copy of the Order dated September 22, 2006 which directed plaintiffs to comment on the motion to recall witness. Judge Paño insisted that plaintiffs' comment was required as part of due process. Judge Paño further clarified that on October 3, 2008, upon discovering that plaintiffs have not received