

SECOND DIVISION

[A.M. No. RTJ-11-2279 (Formerly OCA IPI No. 08-3041-RTJ), April 06, 2011]

**FLORENCE EBERSOLE DEL MAR- SCHUCHMAN, COMPLAINANT,
VS. JUDGE EFREN M. CACATIAN, REGIONAL TRIAL COURT,
BRANCH 35, SANTIAGO CITY, ISABELA, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

The instant case before us now is an offshoot of A.M. OCA IPI No. 08-3041-RTJ wherein the Third Division, in a Resolution ^[1] dated September 16, 2009, resolved to adopt and approve the recommendation of the Office of the Court Administrator (OCA), which dismissed the charges of Florence Ebersole Del Mar-Schuchman (complainant) against Judge Efren Cacatian (Judge Cacatian) for lack of merit and for being judicial in nature.

To recapitulate, the antecedent facts of the case are as follows:

Complainant Schuchman is one of the children of Norma Ebersole Del Mar who is the party-plaintiff in Civil Case No. 35-2373, entitled *Norma Ebersole Del Mar v. Robert Del Mar* for reconveyance of ownership and possession of disputed properties.

On October 21, 1997, the Regional Trial Court of Santiago City, Branch 35, then presided by Judge Demetrio Calimag, Jr., rendered a decision ^[2] in favor of plaintiff.

Defendant Robert Del Mar appealed to the Court of Appeals. However, in a Resolution ^[3] dated January 13, 1999, the appeal was dismissed due to appellant's failure to file an appellant's brief, in violation of Section 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.

Defendant Robert Del Mar then filed a petition for *certiorari* before this Court, but was, likewise, dismissed in a Resolution ^[4] dated March 13, 2002 on the ground that *certiorari* was not a substitute for a lost appeal.

On September 7, 2005, upon motion of plaintiff-appellee, Judge Efren Cacatian issued a Writ of Execution ^[5] to implement the October 21, 1997 Decision of the trial court.

Meanwhile, before the full implementation of the writ of execution, complainant alleged that they were called to the chamber of Judge Cacatian for a conference. Complainant narrated that during the conference, Judge Cacatian proposed a package deal for the issuance of the titles of the subject properties in the names of the three (3) heirs of judgment-plaintiff, including herself. In exchange, complainant

was asked to provide the amount of P350,000.00 as fee for "real estate research fixing."

Complainant alleged that she immediately asked her niece, witness Helen Grace Ebersole Alamar (Alamar), to go to Roger Colobong, who was working at the Philippine National Bank, Santiago City Branch, to obtain P50,000.00. On the same day, complainant alleged that she gave P50,000.00 to Judge Cacatian and promised to give the remaining P300,000.00 as soon as she returned from her trip to the United States of America.

However, upon inquiry from the Bureau of Internal Revenue, complainant discovered that the settlement of the estate tax would only cost P125,000.00. Complainant then opted to settle the amount immediately, thus, new certificates of titles were eventually issued in their names.

Subsequently, defendant Robert Del Mar filed: (1) a Manifestation with Motion to Recall All Orders Issued by this Court for the Enforcement of the Judgment dated April 4, 2007; (2) Motion for Reconsideration dated April 12, 2007; and (3) Motion to Suspend Further and/or Full Implementation of the Writ of Execution dated May 10, 2007.

On July 17, 2007, respondent judge granted said motions, [6] the dispositive portion of which reads:

WHEREFORE, the motions are granted. Consequently, the following Orders are hereby reversed, recalled, revoked and/or cancelled, to wit:

- a.) Order of September 7, 2005, granting the motion for execution;
- b.) Writ of Execution also dated September 7, 2005; and
- c.) Resolution dated March 19, 2007, ordering the full execution of the decision.

Accordingly, the Register of Deeds is hereby ordered: (1) to reinstate the following certificates of titles, namely: T-82257, T-82260, T-82261, T-82258, T-82264, T-82263, T-82259 and T-134664 back in favor of defendant Robert Del Mar; and 2) to cause the cancellation of these titles, namely: TSC-9463, TSC-9464, TSC-9465, TSC-9466, TSC-9467, TSC-9468, TSC-9469 and TSC-9470 in the name of deceased plaintiff Norma Ebersole Del Mar, and all derivative titles therefrom.

Finally, the executing sheriff is ordered to defer the execution of the decision of this case.

SO ORDERED.

Feeling aggrieved, complainant filed the instant administrative complaint against Judge Cacatian. Complainant asserted that respondent judge exercised grave abuse of discretion amounting to lack of jurisdiction in issuing the Orders dated July 17,

2007 and November 21, 2007. She maintained that in issuing said Orders, respondent judge, in effect, reversed and set aside the trial court's Decision dated October 21, 1997 which was already rendered final by the Supreme Court in its Decision dated March 13, 2002.

Complainant further averred that respondent judge violated the Code of Judicial Conduct when he personally brokered the settlement of the estate of the plaintiff and the issuance of new certificates of titles, and solicited by way of research fee, the amount of P350,000.00 of which respondent judge received the amount of P50,000.00.

On November 18, 2008, the OCA directed respondent judge to comment on the charges of Violation of Code of Judicial Ethics, Extortion, Grave Abuse of Judicial Discretion and Rendering an Unjust Interlocutory Order against him. [7]

In his Comment [8] dated December 19, 2008, Judge Cacatian denied having extorted money much less received the amount of P50,000.00 from complainant as downpayment for the supposed fixing of the titles of the properties. He further alleged that he could not have transacted with complainant since he did not know her personally. He claimed that he prohibited litigants from entering his chambers, thus, he could not have met complainant for purposes of carrying out the transaction being complained of. Atty. Norberto Obedoza, Branch Clerk of Court of the same court, corroborated Judge Cacatian's claim that it is the latter's policy to prohibit litigants from entering his chamber.

On August 3, 2009, the OCA recommended that the instant complaint against Judge Cacatian be dismissed for lack of merit and for being judicial in nature. [9]

On August 19, 2009, complainant submitted additional documentary evidence in support of the instant complaint against respondent judge, to wit: (1) Affidavit [10] of Roger P. Colobong; and (2) Affidavit [11] of Helen Grace E. Alamar. Both witnesses corroborated complainant's allegation that Judge Cacatian received P50,000.00 from her.

In a Resolution dated September 16, 2009, the Court adopted and approved the findings and recommendation of the OCA and dismissed the complaint against Judge Cacatian for lack of merit and for being judicial in nature.

However, in a letter dated November 23, 2009, complainant alleged that there were irregularities in the handling of the complaint she filed against Judge Cacatian. She manifested that the additional affidavits she submitted were not considered by the Court in their Decision dated September 16, 2009.

In a Resolution [12] dated January 11, 2010, the Court resolved to treat complainant's letter dated November 23, 2009 as a motion for reconsideration of the Resolution dated September 16, 2009, and referred said motion to the OCA for evaluation, report and recommendation.

Subsequently, in a Memorandum [13] to Chief Justice Renato C. Corona dated April 26, 2010, the OCA, in the interest of substantial justice, recommended that

complainant's motion for reconsideration of the Resolution dated September 16, 2009 be given due course, and be referred to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

In the same Memorandum, the OCA likewise explained that the additional documents filed by complainant were actually received on time by the Court on August 24, 2009.

Thus, on July 26, 2010, the Court resolved to give due course to the motion for reconsideration of the Resolution dated September 16, 2009 and referred the same to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

In his Report dated November 10, 2010, Associate Justice Michael P. Elbinias ^[14] found Judge Cacatian guilty of violating Rule 5.02 of the Code of Judicial Conduct and thus recommended that he be fined in the amount of P11,000.00.

In the report, the allegations of extortion and knowingly rendering an unjust order or judgment were recommended to be dismissed due to insufficient evidence. However, for proposing or brokering to facilitate the transfer of titles of the properties of complainant's mother to complainant and her siblings, Judge Cacatian was found to be engaged in a commercial transaction that affected his appearance of impartiality, thus, violated Rule 5.02 of the Code of Judicial Conduct.

Likewise, the Investigating Justice observed during the hearing that, in contrast with Judge Cacatian's bare denial that he had a conference with complainant, complainant and her witness, Alamar, appeared candid and sincere in asserting that they have met Judge Cacatian. Atty. Obedoza also could not testify with certainty whether such conference took place, because he was manning two separate offices. Judge Cacatian also failed to present his wife to refute the allegation that she was also present during the alleged conference. Thus, the Investigating Justice surmised that it was possible that the alleged conference indeed took place.

We agree with the findings and recommendation of the Investigating Justice.

In this case, the allegation of extortion or unjust exaction of money was found to be baseless. Complainant failed to prove that Judge Cacatian demanded money from her in exchange for a favorable decision. In fact, the judgment in the subject case had long been final at the time when the alleged act of extortion transpired. There was no allegation or finding that respondent judge actually threatened to reverse the writ of execution if she cannot provide the subject money. As testified to by complainant, she and Judge Cacatian merely discussed and negotiated the transaction where Judge Cacatian through his wife, will facilitate the processing and transferring of the titles of the subject properties from complainant's mother to complainant and her siblings.

Indeed, an accusation of extortion is very easy to concoct and difficult to disprove. The proceedings in charges of this character are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. Thus, as in this case, it must, therefore, be proven beyond reasonable doubt inasmuch as what is imputed against respondent judge connotes a misconduct so grave that, if proven, would entail dismissal from the bench. The quantum of proof