

THIRD DIVISION

[A.M. No. RTJ-07-2031 (Formerly OCA IPI No. 06-2484-RTJ), August 04, 2009]

ADELPHA E. MALABED, COMPLAINANT, VS. JUDGE ENRIQUE C. ASIS, REGIONAL TRIAL COURT, BRANCH 16, NAVAL, BILIRAN, RESPONDENT.

D E C I S I O N

Before this Court is a verified complaint^[1] dated February 23, 2006, filed by complainant Adelpha E. Malabed with the Office of the Court Administrator (OCA), charging respondent Judge Enrique C. Asis with violation of Rule 1.02, Canon I of the Code of Judicial Conduct for exhibiting bias and partiality with regard to Civil Case No. B-1016, entitled *Adelpha E. Malabed v. Sps. Ruben Cericos and Delia Cericos*.

Herein complainant, therein plaintiff in the civil case, acquired a parcel of land from her brother Conrado Estreller. Thereafter, therein defendants, spouses Ruben and Delia Cericos, began building their house on the said parcel of land belonging to Estreller. When complainant knew that she would acquire the parcel of land from Estreller, she wrote the Spouses Cericos, informing them of her intention to use the land, and asked that they vacate the premises. After the title to the land had been transferred in her name, complainant, through counsel, made a written demand on the spouses Cericos to vacate the land in question within a period of 90 days from receipt thereof. Still, the Spouses Cericos refused to heed complainant's request and the parties failed to reach an amicable settlement. Thus, on April 15, 1996, complainant filed a civil case for ejectment and damages with the Municipal Circuit Trial Court (MCTC) of Kawayan-Almeria, Kawayan, Biliran, docketed as Civil Case No. 860, entitled *Adelpha E. Malabed v. Sps. Ruben Cericos and Delia T. Cericos*.

In its Decision^[2] dated July 11, 1997, the MCTC rendered judgment in favor of complainant (therein plaintiff), the dispositive portion of which reads:

WHEREFORE, for all the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering the defendants to vacate the premises by removing any structure found or building inside the lot of the plaintiff which is described in paragraph 2 of the complaint;
2. Ordering the defendants to pay the plaintiff the sum of P10,000.00 as attorney's fee and appearance fees of P3,500.00;
3. Ordering the defendants to pay the plaintiff the expenses of litigation in the amount of P5,000.00;

4. Ordering the defendants to pay plaintiff punitive and corrective damages in the amount of P3,000.00.

SO ORDERED.

The defendants in said civil case, represented by counsel, Atty. Redentor Villordon, appealed to the Regional Trial Court (RTC), Branch 16 of Naval, Biliran, where respondent Judge presided. Said case was re-docketed as Civil Case No. B-1016.

On January 25, 1999, respondent Judge affirmed the MCTC Decision^[3] dated July 11, 1997. Defendants Spouses Cericos filed a Motion for Reconsideration on March 2, 1999, but said motion was denied by respondent Judge for lack of merit in an Order^[4] dated March 4, 1999.

On May 3, 1999, respondent Judge issued a Writ of Execution, pursuant to which the sheriff padlocked the house of defendants Spouses Cericos and delivered possession thereof to complainant.

On May 12, 1999, defendants Spouses filed a Petition for Relief from Judgment^[5] prepared by their new counsel, Atty. Meljohn de la Peña, which complainant duly opposed. Complainant, in turn, filed a Motion for Writ of Demolition on June 10, 1999, which defendants Spouses opposed.

In an Order^[6] dated August 12, 1999, respondent Judge granted the petition for relief and denied the motion for writ of demolition, stating thus:

x x x x

The thrust of the petition is anchored on the fact that plaintiff-appellee failed to disclose a material fact in court that she had given her consent to the defendants-appellants before they started to build the residential house on the lot allegedly owned by plaintiff-appellee which is the subject matter of the above-entitled case.

Defendants-appellants' mother, Simplicia A. Ybañez, widow, manifested in her affidavit of good faith that sometime in the month of April 1990, she, her daughter Delia Cericos, and one Melda Ampong, met Adelpha E. Malabed, plaintiff-appellee, her mother Matilde Estreller, Conrado Estreller, eldest brother, and one Charita Estreller, elder sister of the plaintiff-appellee in a rented house of Charita Estreller and Conrado Estreller at Kamuning, Quezon City for the purpose of asking their formal consent to renovate her old house standing on the lot in question. In that meeting, Adelpha E. Malabed, plaintiff-appellee, together with her mother, brother and sisters, approved her plans and had given their consent not only to the renovation of the old house owned by Simplicia A. Ybañez but, if possible, to construct a new one for the Cericos Family and her mother.

That pursuant to the approval, consent and agreement to allow them to

construct said residential house and to surrender the same to the plaintiff-appellee after twenty-five (25) years as one of the terms and conditions, defendants-appellants through [their] mother, Simplicia A. Ybañez, started working in the construction sometime in 1991 and the house was finished in 1992.

Considering the warranty under this verbal agreement which induced the defendants-appellants to construct the said residential house at the cost of Five Hundred Thousand Pesos (P500,000.00), there is therefore a need to look into and dig deeper by way of giving the defendants-appellants their day in court to show by evidence whether this [is] true or not. This alleged warranty on the part of the plaintiff-appellee which she failed to disclose is very material and could possibly tilt the judgment of this court on the ground of bad faith on the part of plaintiff-appellee. As a matter of fact, Conrado Estreller, plaintiff-appellee's eldest brother, was the one who procured the building permit for the defendants-appellants. The failure therefore on the part of the plaintiff-appellee to disclose this material fact of prior agreement, which resulted in the judgment in favor of the plaintiff-appellee, is tantamount to extrinsic fraud. x x x

x x x x

The Court believes that there is a need to ventilate the facts and the evidences pertaining to that prior agreement which, as a result of the failure on the part of the plaintiff-appellee to disclose this material fact, resulted to the injury of the defendants-appellants whose house is now the subject of a motion for demolition.

x x x x

Respondent Judge likewise denied complainant's motion for reconsideration in an Order dated December 20, 1999.

Complainant then filed a petition for *certiorari*^[7] with the Court of Appeals (CA) assailing the Order dated August 12, 1999 of respondent Judge.

In its Decision^[8] dated June 23, 2000, the CA granted complainant's petition and annulled the Orders dated August 12, 1999 and December 20, 1999, stating thus:

x x x x

The petition for relief was filed out of time (on May 12, 1999). The 60-day period for its filing should be reckoned from the date of receipt by private respondents of the RTC decision. However, such material date does not appear in the record. But even if the decision was received by private respondents on the date (March 2, 1999) of filing of their motion for reconsideration thereof, the petition was still filed out of time. It was presented on the 71st day counted from March 2, 1999.

x x x x

Furthermore, in *Garcia v. Court of Appeals* (202 SCRA 228), it was held that fraud as a ground for petition for relief must be extrinsic or collateral. In the same case, the Supreme Court made a distinction between extrinsic and intrinsic fraud, thus:

x x x x

Given the definitions of extrinsic and intrinsic fraud, private respondents' averments concerning the fraud purportedly committed by petitioner and her predecessor-in-interest (Conrado) do not constitute extrinsic fraud.

x x x x

In her Complaint, complainant alleged that respondent Judge showed bias and partiality in favor of defendants Spouses Cericos because their new counsel, Atty. De la Peña, represented respondent Judge in administrative complaints filed against the latter. Complainant further averred that her sister, Perla Haverly, was plaintiff in a civil case for ejectment docketed as Civil Case No. 973, filed with the MCTC of Kawayan, Biliran, which rendered a decision in her sister's favor. The defendants therein filed an appeal with respondent Judge's court, which granted the same. Complainant claimed that respondent Judge reversed the decision of the MCTC because the counsel for the defendants was Atty. De la Peña.

In his Comment^[9] dated May 23, 2006, respondent Judge denied that he granted the petition for relief from judgment because Atty. De la Peña represented him in an administrative complaint filed against him docketed as A.M. No. RTJ-00-1590, entitled *Gina B. Ang v. Judge Enrique C. Asis*. He stated that, when Atty. De la Peña filed the petition for relief from judgment on behalf of defendants Spouses on August 12, 1999, the administrative case against him had not yet been filed, as it was only filed on April 7, 2000. He refuted the charge that he was biased in favor of Atty. De la Peña in relation to the civil case filed by complainant's sister, arguing that Atty. De la Peña was neither a defendant nor a plaintiff in the said civil case, which could have influenced him in deciding the case. Respondent Judge added that it was, in fact, complainant herself who came to his office several times, lobbying for a favorable judgment for her sister in a civil case for quieting of title^[10] filed before his sala. He told her that he would not hesitate to write a correct verdict based on the evidence appearing in the case records. He claimed that after a conscientious deliberation of the case, he rendered a decision in accordance with the evidence and the applicable law and jurisprudence on the matter.

In her Reply^[11] dated July 19, 2006, complainant denied approaching respondent Judge to lobby for a favorable decision. She emphasized that she had filed a petition for review relative to Civil Case No. B-1016 before the CA, Cebu City.

In his Rejoinder to Reply^[12] dated August 24, 2006, respondent Judge asserted that there was no finding of misconduct in the CA Decision dated June 23, 2000, which merely annulled and set aside the assailed Orders in Civil Case No. B-1016. He added that in complainant's attempt to strengthen her case, she added as her second cause of action the administrative case of *Felicitas V. Dadizon v. Judge*

Enrique Asis docketed as A.M. No. RTJ-03-1760, which was already dismissed by the Court on January 15, 2004.

In its Report^[13] dated October 17, 2006, the OCA gave the following findings:

EVALAUTION: Before a respondent judge can be declared as biased and partial in favor of a party, the court has to be shown acts and conduct of a judge clearly indicative of arbitrariness or prejudice. Mere suspicion that the judge is partial to a party is not enough; there should be adequate evidence to prove the charge. (*Opis vs. Judge Dimaano, A.M. No. RTJ-05-1942, 28 July 2005*)

In this case, complainant alleged that respondent judge was biased in favor of Atty. Meljohn Dela Peña because he was his counsel in the administrative case filed against him by Ms. Gina Ang. The respondent judge disputed this, arguing that there was no administrative case yet when Atty. Dela Peña handled the case of the Sps. Cericos.

The charge of bias and partiality must, therefore, fail. Aside from the complainant's allegation of bias and partiality because the Sps. Cericos are represented by Atty. Meljohn Dela Peña, she failed to substantiate her claims.

The complainant, in her Reply dated 19 July 2006, accuses the respondent judge of grave abuse of discretion in granting the Petition for Relief from Judgment based on the Decision dated 23 June 2000 of the Court of Appeals, which granted the complainant's Petition for Certiorari. In the said Decision, the respondent's Orders dated 12 August 1999 and 20 December 1999 were annulled and set aside. Its findings read as follows:

The petition for relief was filed out of time (on May 12, 1999). The 60-day period for its filing should be reckoned from the date of receipt by private respondents of the RTC decision. However, such material date does not appear in the record. But, even if the decision was received by private respondents on the date (March 2, 1999) of filing of their Motion for Reconsideration thereof, the petition was still filed out of time. It was presented on the 71st day counted from March 2, 1999.

The 60-day period was not suspended during the pendency of the motion for reconsideration. Thus, in *Meralco v. Domingo* (18 SCRA 961), the Supreme Court held:

The filing of the motion for reconsideration and a new trial, while it suspended the period for the finality of the judgment did not suspend the period provided for in Rule 38. It is error and grave abuse of discretion by the trial court to subtract from the