

## EN BANC

[ A.M. NO. RTJ-05-1901, November 30, 2006 ]

**FORTUNE LIFE INSURANCE, COMPANY, INC., REPRESENTED BY  
AMBROCIA G. CANCIO, COMPLAINANT, VS. JUDGE JIMMY H. F.  
LUCZON, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT,  
TUGUEGARAO, BRANCH 1, RESPONDENT.**

### RESOLUTION

#### **CARPIO, J.:**

For resolution is the administrative complaint filed by Fortune Life Insurance Company, Inc. ("complainant"), through its Senior Vice-President Ambrocia G. Cancio, against Jimmy H. F. Luczon, Jr. ("respondent Judge"), Presiding Judge of the Regional Trial Court of Tuguegarao ("RTC-Tuguegarao"), Branch 1. The charges are grave abuse of authority, gross ignorance of the law, knowingly rendering an unjust order, and bias and partiality under Section 3, Rule 140 of the Revised Rules of Court.

Complainant had sought the foreclosure of a real estate mortgage executed in its favor by Maria Victoria Realty and Development Corporation ("MVRDC"). On 8 October 2003, however, MVRDC filed a petition for annulment of real estate mortgage and accounting with prayer for the issuance of a preliminary injunction and temporary restraining order ("petition") against complainant. The case was filed before the RTC-Tuguegarao and docketed as Civil Case No. 6246. On the same day, RTC-Tuguegarao Executive Judge Vilma T. Pauig ("Judge Pauig") issued a temporary restraining order (TRO) enjoining complainant and the deputy sheriff from holding a foreclosure sale of MVRDC's real properties on 10 October 2003. The TRO was to be effective for 72 hours. The clerk of court sent a notice for the special raffle of the case on 13 October 2003.

On 13 October 2003, MVRDC filed a motion for the extension of the TRO ("motion for extension"), with notice of hearing for 16 October 2003. On the latter date, after the raffle of the case to his sala, respondent Judge issued an Order<sup>[1]</sup> extending the TRO for another 17 days.

On 28 October 2003, respondent Judge issued the writ of preliminary injunction prayed for by MVRDC. Respondent Judge had not yet conducted any hearing on the case. The injunction order reads:

Considering the fact that the temporary restraining order will expire on October 30, 2003 a date appearing from the allegations of the motion[,]  
that irreparable injuries may result should the sheriff pursue the  
foreclosure of the mortgage[,]  
the Court hereby grants the injunction  
subject however to a bond which will answer for the damages which the  
defendants may suffer as a result of the injunction and the bond is fixed

at P300,000.00

This injunction will take effect upon filing of the bond and shall continue until further orders from this Court.

The Sheriff and any of his deputies are hereby enjoined from enforcing the foreclosure of the mortgage during the pendency of this injunction.

x x x x<sup>[2]</sup>

Complainant assailed the extension of the TRO and the issuance of the writ of preliminary injunction "based purely on the unilateral allegations of MVRDC." Complainant argued that respondent Judge should not have issued the TRO or writ without a summary hearing, especially considering that MVRDC's petition lacked an affidavit of merit. Complainant asserted that it clearly had the right to foreclose the mortgage. MVRDC defaulted in the payment of its loan, as shown by copies of dishonored MVRDC checks totaling P3,165,810.<sup>[3]</sup> Complainant pointed out that under the law, MVRDC would have the right to redeem any of its foreclosed properties. Thus, according to complainant, there was no extreme urgency, grave injustice or irreparable injury which would justify the injunction in MVRDC's favor.

In its 1st Indorsement dated 2 March 2004, the Office of the Court Administrator (OCA) required respondent Judge to file his comment and to show cause why he should not be sanctioned.

In his defense, respondent Judge claimed that he did not know personally the counsels of either party to the case or any of their incorporators. Respondent Judge maintained that he dealt with the parties on a professional level and he always acted fairly.

Respondent Judge claimed that complainant received a copy of the motion for extension, as shown by a registry receipt posted on 13 October 2003. He granted the motion for extension in view of the urgency of the case and to avoid irreparable injuries to MVRDC. Respondent Judge further claimed that complainant received a copy of the Motion to Set Hearing for the Issuance of Preliminary Injunction, as shown by a registry receipt posted on 17 October 2003. At any rate, respondent Judge stressed, he already issued an order dissolving the writ of preliminary injunction on 18 March 2004 after complainant filed a motion to dissolve the writ and MVRDC had filed its comment to the motion.

In its evaluation of the allegations of both complainant and respondent Judge, the OCA stated:

The instant complaint is partly meritorious. Complainant stresses pertinent points to account for respondent's alleged culpability. A probe into each reveals that many of the issues raised are judicial in nature. Save for one, the enumerated points warrant no culpability on the part of respondent Judge.

Complainant assails the supposed lack of an Affidavit of Merit. Viewed in the context of the actual petition for preliminary injunction, this contention cannot be countenanced. The absence of an Affidavit of Merit

is not final where the petition itself, which is under oath, recites the circumstances or facts which constitute the grounds of the petition.

Complainant also takes issue with the fact that it was not furnished a copy of the bond. Apparently, this contention is premised on Section 7 of Rule 58, 1997 Rules of Civil Procedure, which in effect allows the adverse party to "except to the sufficiency of the bond, or of the surety or sureties thereon." Again, said contention cannot be sustained in light of the circumstances of the case at hand. A check with the records of the instant case discloses that the summons, a copy of the petition, and raffle notification were actually received by the complainant on 10 October 2003. In *Caluya v. Ramos*, the failure of the defendants to furnish the adverse parties with copies of the bonds prior to their approval is not sufficient to invalidate the orders dissolving the preliminary injunction where the attorneys for the latter were notified of the filing of the first bond; where they ultimately received copies of the bonds; and where they do not contend that said bonds are insufficient or that the sureties are not solvent.

Except for the allegation of lack of summary hearing, complainant's charges against respondent Judge should be dismissed for being judicial in nature. Essentially the same allegations were raised in the Motion to Dissolve Writ of Preliminary Injunction. The complainant assails the wisdom of the assailed Orders of respondent. However, it must be noted that the complainant has adequate remedy under the Rules of Court to challenge said Orders. In fact, it filed a [m]otion to [d]issolve the [w]rit of [p]reliminary [i]njunction which was eventually granted on 18 March 2004.

We submit, however, that the absence of summary hearing cannot be excused. The conduct of a summary hearing is mandated under Section 5, Rule 58, 1997 Rules of Procedure x x x x.

The requirement of hearing is so basic and fundamental that an omission of [such] amounts to gross ignorance of rules and procedure and invites due sanction. In this case, respondent [Judge] twice ignored this elementary requisite. First, he extended the TRO. Then, after its expiration, he converted the same into a preliminary injunction. Both Orders were issued without conducting a summary hearing. The rules on preliminary injunction plainly provide that it cannot be granted without notice to the defendant.

When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. Judges are duty-bound to be faithful to the law and the rules and to maintain professional competence at all times. Their role in the administration of justice requires a continuous study of the law, rules and jurisprudence, lest public confidence in the judiciary be eroded by incompetence and irresponsible conduct.

x x x [I]t bears stressing that a writ of injunction is an extraordinary, peremptory remedy that should be dispensed with circumspection, and