

## SECOND DIVISION

**[ A.M. No. RTJ-93-1021, January 31, 1997 ]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT,  
VS. JUDGE SALVADOR P. DE GUZMAN, JR., PRESIDING JUDGE,  
REGIONAL TRIAL COURT, BRANCH 142, CITY OF MAKATI, METRO  
MANILA, RESPONDENT.**

### DECISION

**TORRES, JR., J.:**

The administration of justice is likened to that of a voyage to nowhere-unless it is manned by honest and able magistrates, it drifts aimlessly. Magistracy is after all-about character.

In this administrative case, the Office of the Court Administrator<sup>[1]</sup> filed against Judge Salvador P. De Guzman, Jr., Presiding Judge of Regional Trial Court, Branch 142, Makati, Metro Manila, for serious misconduct in connection with the lifting of the notice of lis pendens in the case of Norvic Incorporated, represented by its president Atty. Vicente Santos against St. Michael International Institute of Technology, represented by its president Erlinda M. Peñaloza, and St. Michael Institute Corporation, represented by its president Patricia M. Peñaloza, docketed as Civil Case No. 91-1123.

From the underlying record of Civil Case No. 91-1123, its factual backdrop may be summed up as follows:

It appears that Norvic Incorporated (Norvic, for brevity) was the principal stockholder of Overseas Superintendence Corporation (OSC, for brevity) which was the registered owner of a parcel of land (Yakal property) situated in Makati, covered by Transfer Certificate of Title No. 142203. On August 1, 1986, Atty. Vicente Santos, acting as president of Norvic, entered with St. Michael International Institute of Technology (SMIIT, for brevity), represented by its president Erlinda M. Penaloza, into a contract to sell<sup>[2]</sup> the OSC shares of stock and the Yakal property. Subsequently, OSC conveyed the Yakal property to St. Michael International Realty and Management Corporation (SMIRM, for brevity) pursuant to the Deed of Conveyance and Exchange dated December 21, 1989.<sup>[3]</sup> The Transfer Certificate of Title No. 142203 of OSC was consequently cancelled and a new one (TCT No. 167832)<sup>[4]</sup> was issued in the name of SMIRM.

Two years later, Norvic filed this subject case<sup>[5]</sup> (Civil Case No. 91-1123 which was assigned to the sala of Judge Cosico) for the annulment of the Deed of Conveyance and Exchange dated December 21, 1989 on the ground that the transfer of the Yakal property was fraudulent. Due to the

filing of this case, Norvic caused the annotation of lis pendens on TCT No. 167832 on April 22, 1989.<sup>[6]</sup> SMIIT and SMIRM, the defendants in this Civil Case No. 91-1123, filed a motion to cancel the notice of lis pendens,<sup>[7]</sup> but, the same was denied by Judge Cosico in his order dated June 26, 1991.<sup>[8]</sup> As a result of Judge Cosico's resignation from judicial service on December 31, 1991, Norvic filed a motion to re-raffle the case on January 20, 1992<sup>[9]</sup> which was granted by Executive Judge Job B. Madayag.<sup>[10]</sup> Thus, the case was referred to respondent Judge De Guzman following the re-raffling<sup>[11]</sup> of the case on February 7, 1992 before the sala of Executive Judge Job B. Madayag. Later on, defendants SMIIT and SMIRM filed a motion for reconsideration<sup>[12]</sup> of the order of denial dated June 26, 1991 of then Judge Cosico and for the cancellation of notice of lis pendens contending, inter alia, that Norvic was not the proper party whose rights might be protected by the annotation of lis pendens because it was not the registered owner of the Yakal property before and after it was transferred to defendant SMIRM. On August 5, 1992, respondent De Guzman reconsidered the order of denial dated June 26, 1991 of then Judge Cosico and ordered the cancellation of the notice of lis pendens.<sup>[13]</sup> A year later the parties reached a compromise settlement, thus, a joint motion<sup>[14]</sup> was filed by both parties praying for the dismissal of the case which was granted by respondent De Guzman in his order dated September 23, 1993.<sup>[15]</sup>

The administrative suit against respondent Judge de Guzman was based on the testimony<sup>[16]</sup> of former judge Manuel Cosico which was taken during the investigation of the alleged irregularities in service of some judges in Makati conducted by the Ad Hoc Committee created under Administrative Order No. 11-93 which was composed of Chief Justice Andres R. Narvasa and retired Justices Lorenzo R. Relova and Amuerfina A. Melencio-Herrera.

The Complaint dated July 5, 1993<sup>[17]</sup> against respondent Judge De Guzman states, inter alia, that respondent approached at least twice Judge Manuel Cosico, then Presiding Judge of the Regional Trial Court, Branch 136 of Makati in whose sala the aforesaid Case No. 91-1123 was then pending and asked him to grant the motion to lift the notice of lis pendens filed by one of the parties in the said case. When Judge Cosico denied the motion, respondent came back asking him to reconsider the order of denial. Following the resignation from the service of Judge Cosico, the said case was re-raffled to the sala of respondent who reconsidered the order of denial issued by then Judge Cosico and cancelled the notice of lis pendens, thereby showing keen personal interest on the said case to the prejudice of the administration of justice.

Respondent, in his Comment dated September 3, 1993,<sup>[18]</sup> denies having approached Judge Cosico and asking him to take any action in connection with the said case. He asserts that Judge Cosico was motivated by vindictiveness when he testified falsely against respondent during the Ad Hoc Committee hearing. During their several meetings, respondent and Judge Cosico only talked to each other mostly on matters of law but he never asked Judge Cosico any favor nor to act in a certain way in any case except in Civil Case No. 90-1506 involving the respondent himself who requested Judge Cosico to rule on his motion for execution. He alleges that he became aware only of the Norvic case when he was informed through

telephone by the President of Norvic Incorporated, Atty. Vicente Santos who was his former classmate in Ateneo de Manila, that said case was re-raffled to his sala. He offered to inhibit from trying the case because of his friendship with Atty. Santos but both parties requested the respondent to keep the case and help in its amicable settlement. He adds that the reversal of Judge Cosico's order, which was done in utmost good faith after several months of efforts in arriving at a settlement, was well-taken and accepted by the parties.

In a Resolution dated October 4, 1993<sup>[19]</sup> of the First Division of this Court, this administrative case was referred to Justice Manuel C. Herrera for report and evaluation. Pursuant to the authority given, he conducted hearings on November 19, 1993 and December 3, 1993. Considering however his request<sup>[20]</sup> that he be allowed to inhibit from further proceeding with the said case on the ground that Judge Cosico, the principal witness of the case, was his colleague in the Faculty of the Ateneo Law School, the case was assigned to Justice Jaime N. Lantin.<sup>[21]</sup> But Justice Lantin likewise inhibited from trying the case, so, it was given to Justice Gloria C. Paras for report and recommendation.<sup>[22]</sup> On April 13, 1994, Justice Paras asked to be relieved from the investigation of the case which was granted by this Court. Finally, the case was re-assigned to Justice Bernardo Ll. Salas by virtue of the Resolution dated May 18, 1994.<sup>[23]</sup>

In his Report dated September 14, 1994, Justice Salas found that respondent, in reconsidering the order of denial issued by Judge Cosico and consequently lifting the notice of lis pendens, was not dictated by pecuniary consideration, but nevertheless held him liable for influencing the outcome of the subject case when it asked Judge Cosico to cancel the notice of lis pendens.<sup>[24]</sup> The recommendation of Justice Salas in his Report reads as follows:

"THE FOREGOING CONSIDERED, the undersigned recommends as a penalty, reprimand, with a warning of a more severe penalty in case of repetition."<sup>[25]</sup>

Upon a careful scrutiny of the records, We find no clear and convincing evidence to sustain the allegation that respondent was moved by personal or financial interest in issuing the order dated August 5, 1992 which cancelled the notice of lis pendens. On the contrary, the explanation offered by respondent and the circumstances prevailing in the subject case are sufficient to warrant a conclusion that he in utmost good faith merely discharged his public duty when he lifted the notice of lis pendens. The following significant points are worth considering: first, as what Justice Salas appropriately stated, "if he (respondent) had, either, a desire manifesting financial interest, or to favor somebody, then he should have instead ruled against the lifting (of notice of lis pendens), considering that Atty. Santos (the president of Norvic) was not only his classmate but also a relative of his wife by affinity"<sup>[26]</sup>; second, the subject case was assigned to respondent simply because it was re-raffled to his sala upon motion of Norvic; third, he tried to voluntarily inhibit from the case but the parties themselves asked him to stay on with the case and to help, as he did help, in amicably settling the case which culminated to the filing of a joint motion to dismiss by both parties; fourth, he issued the order lifting the notice of lis pendens after a careful and thorough study of the merits of the motion<sup>[27]</sup> and opposition<sup>[28]</sup> filed by the parties; and, fifth, respondent was legally justified in issuing the order cancelling the notice of lis pendens, the pertinent portion of the said order reads as

follows:

"x x x

The Court subscribes to the position of defendants-movants (SMIIT and SMIRM). Plaintiff Norvic Incorporated is manifestly not the proper party whose rights may be protected by the annotation of lis pendens. It is neither the previous registered owner nor the present registered owner of the property subject matter of the instant case and presently covered by Transfer Certificate of Title No. 167832, hence, bereft of personality to cause the annotation of the subject notice of lis pendens on the said title. The property owned by the plaintiff subject matter of its transaction with the defendants are plaintiffs shares of stock in Overseas Superintendence Corporation. x x x"<sup>[29]</sup>

Under Section 24, Rule 14 of the Rules of Court, the notice of lis pendens may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded. The cancellation order of respondent was issued pursuant to the second ground, that is, the notice of lis pendens was not necessary to protect the right of Norvic which caused it to be recorded. A cautious reading of the records of the instant case reveals that never was Norvic the owner of the Yakal property. It was Overseas Superintendence Corporation (OSC) that owned the Yakal property prior to its transfer to SMIRM. The fact that Norvic was the majority stockholder of OSC would not legally clothe it (Norvic) with personality to cause the notice of lis pendens affecting the property of the corporation (OSC) specially so when the corporation was not even one of the parties to the case. Well settled is the rule that properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members.<sup>[30]</sup> A stockholder is not the owner of any part of the capital of the corporation, nor is he entitled to the possession of any definite portion of its property or assets; he is not a co-owner or tenant in common of the corporate property.<sup>[31]</sup>

In the absence therefore of fraud, dishonesty, corruption or bad faith in issuing the order lifting the notice of lis pendens, this act of respondent which pertains to his judicial capacity is not subject to disciplinary action.<sup>[32]</sup>

We are convinced, however, that respondent approached Judge Cosico at least twice asking him to cancel the notice of lis pendens, thereby, trying to influence the course of the litigation in the subject case in violation of Rule 2.04, Canon 2 of the Code of Judicial Conduct. to wit:

"A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or judge."

Justice Salas, in his Report, made the following observation, to which We agree:

"There is, on the other hand, a reason to believe that the respondent indeed approached Judge Cosico and requested him, from the beginning, to lift the notice of lis pendens. Moreover, the respondent went to Judge