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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIP SEE,
Complainant,

- versus -

JUDGE ROLANDO G. MISLANG, Presiding Judge, Regional Trial Court, Branch 167, Pasig City,
Respondent.

A.M. No. RTJ-16-2454

Present:

CARPIO, *J.*, Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., *JJ.*

Promulgated:
06 JUN 2018

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D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint by Philip See (complainant) against Judge Rolando G. Mislang (respondent), Presiding Judge of the Regional Trial Court of Pasig City, Branch 167, in relation to Civil Case No. 73462-PSG.[1] Respondent is being charged with dishonesty, gross misconduct, and gross ignorance of the law when he lifted, upon motion, the attachment of the assets of the defendant, without awaiting the comment of complainant, the plaintiff in the civil action.

The Antecedent Facts

On 6 December 2011, the Armed Forces of the Philippines (AFP) awarded a medical procurement contract to One Top System Resources, a sole proprietorship owned by Ruth D. Bautista (Bautista). As payment, an irrevocable letter of credit was issued by United Coconut Planters Bank (UCPB). Under Section 11.2 (b) (g) of the Special Conditions of the

[1] Entitled *Philip See v. Ruth D. Bautista, doing business under the name One Stop Business Resources.*

Contract Agreement [sic], "[p]ayment shall be made to [One Top System Resources] at the time of the final acceptance of the goods by the [AFP] x x x, and submission or presentation of x x x [the] Certificate of Final Acceptance by the AFP Technical Inspection and Acceptance Committee (TIAC)."[2]

On 6 March 2012, Bautista and complainant entered into a Deed of Assignment whereby Bautista assigned to complainant the amount of PhP2.6 Million from the proceeds of the letter of credit. In turn, complainant would provide two units of portable x-ray machine and pay for the freight cost and other charges. Bautista also issued to complainant two postdated checks in the total amount of Three Million Five Hundred Twenty-Two Thousand Eight Hundred Ninety-Two Pesos (PhP3,522,892.00). Despite the delivery of the x-ray machines, complainant was unable to collect from Bautista. The two checks were also dishonored for lack of sufficient funds. Complainant, through counsel, sent demand letters, but these went unheeded.

Seeking payment with damages, complainant filed with the Regional Trial Court of Pasig City a Verified Complaint with [P]rayer for Preliminary Attachment on 28 May 2012. Respondent granted the provisional remedy sought and a writ of preliminary attachment was issued. Pursuant to the writ, copies of the Notice of Garnishment dated 13 June 2012 were served by the court sheriff upon the UCPB Head Office and AFP Procurement Services. The AFP filed a Motion to Lift/Quash Notice of Garnishment, arguing that the medical equipment and supplies were undergoing final inspection and evaluation by the AFP Technical Inspection and Acceptance Committee. According to the AFP, because the contract price for the project was not yet due and demandable for lack of a certificate of final acceptance, the alleged earmarked money constituted public funds, which may not be attached. In the Order dated 4 January 2013, respondent denied the motion on the ground that the funds ceased to form part of the general funds of the AFP when they were allocated for payment to a private individual or entity. Instead of the AFP, Bautista filed a Motion for Reconsideration, but it was also denied by respondent in the Order dated 25 March 2013.

Bautista then filed a Motion to Quash which was set for hearing on 10 May 2013. Despite notice, complainant failed to appear. During the hearing, complainant was directed to file his comment or opposition to the motion within a period of five days. Not having received any pleading from complainant, respondent issued an Order dated 22 May 2013, granting the Motion to Quash on the ground that the funds sought to be garnished were still public funds in the absence of a certificate of final acceptance from the AFP. On the same day, the payment for the contract with the AFP was deposited in the UCPB account of Bautista who, in turn, withdrew the entire amount, including the share of complainant subject of the Deed of Assignment between Bautista and him. On 24 May 2013, complainant

[2] *Rollo*, pp. 32, 48, 54.

received a copy of the Order granting the Motion to Quash. Alleging that he was not left with any effective remedy, complainant no longer filed a motion for reconsideration nor pursued any judicial remedy. Instead, complainant instituted an administrative proceeding against respondent.

Recommendation of the Office of the Court Administrator

Sought for comment, respondent argued that complainant was not deprived of his right to due process. According to respondent, the five-day period he gave within which to comment on or oppose the Motion to Quash must be reckoned from the date of the hearing, considering that complainant was furnished a copy of the motion, yet failed to appear despite notice. Respondent also claimed that the lifting of the attachment had legal basis and that in the event he erred, what he committed was an error of judgment not proper for a disciplinary case against him.

In its Evaluation, the Office of the Court Administrator (OCA) found respondent to have violated Canon 2 of the Code of Judicial Conduct, mandating a judge to avoid impropriety and the appearance of impropriety in all activities. According to the OCA, the issuance of the Order dated 22 May 2013 by respondent, without awaiting the comment or opposition of complainant, "raises questions of impropriety that taint his credibility, probity and integrity."[3] Hence, the OCA recommended that respondent be fined and sternly warned that a repetition of the same or similar act shall be dealt with more severely, thus:

> RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:
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> 1. the instant administrative complaint be RE-DOCKETED as a regular administrative matter against Presiding Judge Rolando G. Mislang, Branch 167, Regional Trial Court, Pasig City; and
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> 2. respondent Judge Mislang be found GUILTY of violation of Canon 2 of the Code of Judicial Conduct and FINED in the amount of Ten Thousand Pesos (Php10,000.00) and STERNLY WARNED that a repetition of the same or similar act shall be dealt with more severely.[4]

Respondent's Dismissal from the Service

Incidentally, in *Department of Justice v. Judge Mislang*,[5] the Court found respondent guilty of gross ignorance of the law and ordered his dismissal from the service with forfeiture of retirement benefits and with prejudice to re-employment in the government. The dispositive portion of the Decision dated 26 July 2016 reads in its entirety:

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[3] Id. at 76.
[4] Id. at 78.
[5] 791 Phil. 219 (2016).

> WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Mislang, Regional Trial Court, Pasig City, Branch 167, GUILTY of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and ORDERS his DISMISSAL from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.
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> SO ORDERED.[6]

Respondent sought for reconsideration four times, three of which were denied while the fourth was noted without action. Considering that a second motion for reconsideration by the same party is prohibited,[7] the dismissal of respondent from the service is now final.

The Issues

The issues can be summed up as follows:

(1) Whether respondent justifiably lifted the Writ of Preliminary Attachment he initially granted;

(2) Whether in resolving the motion without awaiting complainant's comment or opposition, respondent denied complainant his right to due process; and

(3) Whether the alleged error of respondent warrants the Court's exercise of disciplinary authority over him.

The Ruling of this Court

The Court disagrees with the OCA.

Preliminarily, the administrative case is not rendered moot by respondent's dismissal from the service.

Notwithstanding respondent's dismissal from the service, the case remains justiciable because other penalties, such as a fine, may still be imposed if he is found guilty of an administrative offense. To illustrate, in *Magtibay v. Judge Indar*,[8] involving a judge found guilty of undue delay in rendering an order and conduct unbecoming a judge, the Court sustained the OCA's recommendation of a fine against the erring judge despite his prior dismissal from the service, thus:

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[6] Id. at 232.

[7] Sec. 2, Rule 52, Rules of Court; Sec. 3, Rule 15, Internal Rules of the Supreme Court. See *Fortune Life Insurance Co., Inc. v. Commission on Audit*, G.R. No. 213525, 21 November 2017.

[8] 695 Phil. 617 (2012).

> However, during the pendency of this case, we note that in *A.M. No. RTJ-10-2232*, respondent has already been dismissed from the service that already attained finality considering that respondent did not file any motion for reconsideration. Nevertheless, it should be emphasized that the same does not render the instant case moot and academic because accessory penalties may still be imposed.
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> In *Pagano v. Nazarro, Jr.*, indeed, we held:
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> > A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, there **are other penalties which may be imposed on her if she is later found guilty of administrative offenses** charged against her, namely, the **disqualification to hold any government office and the forfeiture of benefits.**
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> Under Section 9 (1), Rule 140 of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC, respondent's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In view of respondent's dismissal from service, the OCA's recommendation of a fine in the amount of ₱20,000.00 is, therefore, in order considering that respondent was found guilty for both undue delay in rendering an order and conduct unbecoming of a judge.[9] (Emphasis in the original)

Similarly, the intervening dismissal of respondent during the pendency of this case cannot render the case moot because a fine can still be imposed on him if found administratively liable.

Respondent justifiably lifted the Writ of Preliminary Attachment, considering that the application for provisional relief was prematurely granted.

Complainant charges respondent with gross ignorance of the law for lifting the Writ of Preliminary Attachment he earlier issued. According to complainant, the garnished amount in the UCPB account of Bautista corresponds to AFP's payment to Bautista, and therefore, ceased to form part of the general funds of the AFP.

The Court disagrees.

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[9] Id. at 626-627.

When respondent granted complainant's application for preliminary attachment on 5 June 2012, Bautista was not yet paid the contract price of the medical procurement contract. In fact, AFP paid Bautista almost a year later when the contract price was deposited in the UCPB account of Bautista on 22 May 2013. Significantly, the third whereas clause of the Deed of Assignment between complainant and Bautista stipulates that the amount of PhP2.6 Million due complainant can only be drawn against the letter of credit issued to Bautista "upon presentation of documents from the AFP."[10] This stipulation must be read in relation to Section 11.2 (b) (g) of the Special Conditions of the Contract Agreement [sic], to wit: "[p]ayment shall be made to [One Top System Resources] at the time of the final acceptance of the goods by the [AFP] x x x, and submission or presentation of x x x [the] Certificate of Final Acceptance by the AFP Technical Inspection and Acceptance Committee (TIAC)."[11] In other words, **respondent prematurely granted the application for preliminary attachment** and the AFP rightfully opposed the garnishment of Bautista's receivable in its possession because the alleged earmarked money still constituted public funds at the time.

In *Pacific Products, Inc. v. Ong*,[12] the Court categorically declared as illegal the garnishment of the receivable due a private entity while still in the possession of the government, thus:

> It is noted that the notice of garnishment served upon the Bureau of Telecommunications was made pursuant to an order of attachment issued by the trial court in the case for sum of money against H.D. Labrador. At the time of such service, the amount against which the notice was issued was still in the possession and control of the Bureau. The same situation obtains in the two cases relied upon by the appellate court. While it is true that in the case at bar no salaries of public officials or employees are involved, the reasons for the ruling in the two cited cases are clear. It was held, thus:
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> > x x x. By the process of garnishment, the plaintiff virtually sues the garnishee for a debt due to the defendant. The debtor stranger becomes a forced intervenor. The Director of the Bureau of Commerce and Industry, an officer of the Government of the Philippine Islands, when served with the writ of attachment, thus became a party to the action. (*Tayabas Land Co. vs. Sharruf* (1921), 41 Phil. 382).
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> > A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express

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[10] *Rollo*, p. 13.
[11] Id. at 32, 48, 54.
[12] 260 Phil. 583 (1990).

> authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it. (*Director of Commerce and Industry v. Concepcion*, 43 Phil. 386)
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> x x x x
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> For the foregoing reasons, We affirm the ruling of the appellate court that the writ of garnishment issued against the ₱10,500.00 payable to BML Trading while still in the possession of the Bureau of Telecommunications is illegal and therefore, null and void. x x x.[13]

In fact, respondent's action finds basis in Administrative Circular No. 10-2000,[14] enjoining judges "to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units."[15] The Court issued the administrative circular precisely to prevent the circumvention of Presidential Decree No. (PD) 1445, vesting the Commission on Audit (COA) with the primary jurisdiction to examine, audit and settle all claims against the Government or any of its subdivisions, agencies and instrumentalities. By initially allowing the garnishment, respondent indirectly adjudicated a monetary claim against the AFP, which power to adjudicate is primarily vested in the COA under PD 1445.

Hence, far from committing gross misconduct and gross ignorance of the law, respondent justifiably lifted the Writ of Preliminary Attachment considering the prematurity of the application for provisional relief.

Complainant was not denied his right to due process.

Complainant finds fault in respondent for not awaiting his comment or opposition before resolving the Motion to Quash filed by Bautista. According to complainant, this amounts to a violation of his right to procedural due process.

Complainant is wrong.

In *Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation*,[16] the Court maintained the long-standing doctrine

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[13] Id. at 591-593.

[14] Issued on 25 October 2000.

[15] See *University of the Philippines v. Judge Dizon*, 693 Phil. 226 (2012).

[16] 408 Phil. 392 (2001).

that there can be no denial of procedural due process where opportunity to be heard, either through oral argument or through pleadings, is accorded:

> Petitioners have not been denied their day in court. It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. Where opportunity to be heard, either through oral argument or through pleadings, is accorded, there can be no denial of procedural due process. If it were otherwise, "all that a defeated party would have to do to salvage his case," observed the Court in one case, would be to "claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment," and there would then be "no end to litigation x x x as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he (were) also found wanting, (could) x x x be disowned by the same client through another counsel, and so on *ad infinitum*," thereby rendering court proceedings indefinite x x x.[17]

Here, when Bautista filed her Motion to Quash on 9 May 2013, Bautista set it for hearing on 10 May 2013. Despite notice, complainant failed to attend the hearing. As respondent correctly argued, the five-day period within which to comment on, or oppose the motion must be reckoned from the date of the hearing rather than complainant's receipt of the order, considering that his counsel was duly notified of the date of the hearing. As a rule, notice to counsel is notice to the client.[18] Consistent with his duty to serve his client with competence and diligence, complainant's counsel should have inquired from the trial court about the status of the case and what transpired during the hearing.[19] In fact, the Rules of Court merely require that the motion be heard and respondent may already rule on it during the hearing. In *Spouses Calo v. Spouses Tan*,[20] the Court thus explained:

> The absence of petitioners and their counsel at the aforesaid hearings cannot be justified by their belief that the trial court would first require respondent spouses to comment to or oppose the motions before resolving them. The Rules of Court require only that the motion be heard; it does not direct the court to order the filing of comments or oppositions to the motion before the motion is resolved. During the hearing on the motion, the opposition to the motion and the arguments of the parties may be ventilated; thereafter, the court may rule on the motion. Petitioners and their counsel should have known the significance of the hearing dates since petitioners themselves chose one of the hearing dates and the hearing dates were accordingly fixed with due notice to all the parties.[21]

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[17] Id. at 398.

[18] *Ramos v. Spouses Lim*, 497 Phil. 560, 565 (2005), citing *Lincoln Gerard, Inc. v. National Labor Relations Commission*, 265 Phil. 750 (1990).

[19] Id. at 567. See *Oriental Assurance Corporation v. Solidbank Corporation*, 392 Phil. 847 (2000).

[20] 512 Phil. 786 (2005).

[21] Id. at 797.

Having been notified of the date of the motion hearing and given the opportunity to comment on the motion, complainant cannot be heard to complain that his right to due process was supposedly violated.

An administrative complaint against respondent is not a substitute for a lost judicial remedy.

Complainant admits that he no longer filed a motion for reconsideration or a petition for *certiorari*.[22] According to complainant, pursuing any of these judicial remedies would only be "utterly useless and highly impractical," with his money having been spirited away already.[23]

Complainant is mistaken.

An administrative complaint against a judge is not a substitute for a proper remedy taken in due course to review and undo his or her acts or omissions done in the performance of judicial duties and functions.[24] In *Martinez v. Judge De Vera*,[25] the Court thus explained:

> Complainants should also bear in mind that an administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*. Disciplinary proceedings against a judge are not complementary or suppletory to, nor a substitute for these judicial remedies whether ordinary or extraordinary. For, obviously, if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against her at all. Besides, to hold a judge administratively accountable for every erroneous ruling or decision rendered, assuming she has erred, would be nothing short of harassment and would make her position doubly unbearable.[26]

WHEREFORE, the Court **DISMISSES** the administrative complaint against Judge Rolando G. Mislang, Presiding Judge of the Regional Trial Court of Pasig City, Branch 167, in relation to Civil Case No. 73462-PSG.

SO ORDERED.

ANTONIO T. CARPIO
Senior Associate Justice

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[22] *Rollo*, p. 4.
[23] Id.
[24] *Hernandez v. Judge Gella*, 735 Phil. 500, 502 (2014).
[25] 661 Phil. 11 (2011).
[26] Id. at 23-24.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice