

Sale, before the Municipal Trial Court in Cities (MTCC) of Opol, Misamis Oriental, against Atty. Tamondong's client, Henmar Development Property Inc. (Henmar), docketed as Civil Case No. 2012-06-04. Subsequently, Henmar, through Atty. Tamondong, filed an Omnibus Motion (*Ad Cautelam*) which prayed for, among other reliefs, the dismissal of the complaint based on the following grounds: (a) lack of jurisdiction over the person of Henmar; (b) lack of jurisdiction over the subject matter and/or improper venue; and (c) prescription and/or laches. In an Order dated March 26, 2013, the MTCC denied the motion to dismiss of Henmar. Henmar filed a Motion for Reconsideration but it was also denied by the MTCC in an Order dated July 4, 2013.

Aggrieved, Henmar filed a Petition for *Certiorari*, Prohibition, and Preliminary Injunction with Prayer for Issuance of a Temporary Restraining Order (TRO)² before the RTC, docketed as Special Civil Action No. 2013-184. The case was raffled to Branch 38, presided by Judge Pasal.

On December 23, 2013, Judge Pasal issued a Resolution³ dismissing the Petition for lack of merit, for the following reasons:

This court holds that the denial of the dismissal by the public respondent falls short of the foregoing to justify the issuance of the extraordinary writ of certiorari and prohibition.

On the first ground, the public respondent acted well within her jurisdiction when she ruled that summons was validly served and jurisdiction over the person of Henmar was validly obtained. True, the 1997 Rules on Civil Procedure enumerates specific persons who may validly receive summons for or on behalf of corporations. In the case of *E.B. Villarosa and Partner Co., Limited vs. Herminio I. Benito, et al.* (G.R. No. 136426, August 6, 1999) the Supreme Court emphasized that the list of persons who validly receive summons for a corporation is exclusive and should be strictly followed. However, this is but one side of the jurisprudential spectrum in the interpretation and application on the rule of service of summons on corporations. On the other side of the spectrum is the opinion of Justice Regalado (*p. 225, Remedial Law Compendium Volume 1, 6th ed.*) that service of summons to a secretary who is not the official corporate secretary is binding on the corporation when the same is seasonably received by the corporation. Said opinion became a binding precedent when the same was integrated by the Supreme Court in its ruling in the case of *BPI vs. Sps. Santiago* (G.R. No. 169116, March 28, 2007). It thus appears that the strict interpretation of the rule on service of summons to corporations espoused by the earlier *E.B. Villarosa* case has been modified by the subsequent *BPI* case where the Supreme Court went as far as to pronounce that "there is no hard and fast rule pertaining to the manner of service of summons". The law therefore gives sufficient latitude for judges to exercise discretion in determining whether there was valid service of summons.

² Id. at 13-27.

³ Id. at 28-31.

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Whether or not there were sufficient grounds to declare substantial compliance is irrelevant in a certiorari proceeding as this is not an error of jurisdiction but an error of law which is a proper subject for appeal. Even assuming that the requirements for substantial compliance of service of summons were not present, there is no showing that the public respondent acted arbitrarily or despotically.

On the second ground, petitioner points out that jurisdiction over the case lies outside of the territorial jurisdiction of respondent court which is limited to the Municipality of Opol. The property involved in this case is described in the title and the decree as located in Iponan which is part of the city of Cagayan de Oro. This argument however conveniently ignores the fact, which the public respondent took judicial notice of, that the title and the decree refer to a cadastral survey conducted in 1933 when the Municipality of Opol was not yet in existence. It was only in 1950 that Opol came into existence. A trial is therefore necessary to determine the political boundaries of said new municipality and determine whether the subject property lies within the court's jurisdictional borders.

Finally, on the issue of prescription, jurisprudence has established that an action for reconveyance based on fraud is imprescriptible when the plaintiff is in actual possession of the property (*Leyson et. al. vs. Bontuyan, et. al.*, G.R. No. 156357). In this case, private respondents alleged that they were in actual possession of the property until they were ousted from the same in 2008. Prescription therefore commenced to run only in 2008. Since the present action was filed in 2012, the action has not yet prescribed.

Henmar filed a Motion for Reconsideration⁴ of the foregoing Resolution, and Abada's heirs filed their Opposition/Comment to the Motion for Reconsideration.⁵

In an Order⁶ dated February 24, 2014, Judge Pasal deemed the Motion for Reconsideration of Henmar as already submitted for resolution. However, even after more than six months, Judge Pasal had yet to resolve the said Motion.

Hence, Atty. Tamondong initiated the instant administrative complaint charging Judge Pasal with gross ignorance of the law and/or gross incompetence.

Atty. Tamondong contends that Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 is legally erroneous, insisting that: (a) the MTCC has not acquired jurisdiction over the person of Henmar as the summons was improperly served on the clerical/secretarial staff of another corporation, the Radio Mindanao Network, Inc.; (b) the MTCC does not have jurisdiction over the subject

⁴ Id. at 32-35.

⁵ Id. at 36-37.

⁶ Id. at 40.



property because said property is located in Cagayan de Oro City and not in the Municipality of Opol; and (c) Henmar has been in possession of the subject property, plus, the document/agreement which Abada's heirs seek to enforce against Henmar had been executed on April 22, 1968, so the complaint filed by Abada's heirs before the MTCC only in 2013 is already beyond the 10-year prescriptive period under the Civil Code for filing an action based on a written contract. Atty. Tamondong asserts that Judge Pasal, in ruling against Henmar and dismissing its Petition, showed gross and manifest ignorance and incompetence; and also Judge Pasal, "with all his too glaring, unfounded and unjustified rejection of the factual and legal grounds"⁷ raised by Henmar in its Petition, was unduly favoring Abada's heirs.

In addition, Atty. Tamondong questions Judge Pasal's failure to seasonably act on and resolve the Motion for Reconsideration of Henmar and avers that Judge Pasal's inaction on said Motion for more than six months constituted gross inefficiency and/or gross neglect of duty.

In his Comment,⁸ Judge Pasal invites attention to his Resolution dated December 23, 2013 in Special Civil Action No. 2013-184, which he claims to be self-explanatory as it amply cites the applicable rule, jurisprudence, and opinion of an eminent author. Judge Pasal also points out that the act Atty. Tamondong complains of, *i.e.*, the dismissal of the Petition in Special Civil Action No. 2013-184, is judicial in nature and, in fact, Atty. Tamondong has already elevated the same before the Court of Appeals. Judge Pasal lastly reasons that the exercise of one's judicial discretion in accordance with law, no matter how unfavorable it might be to a party, does not constitute gross ignorance of the law.

Atty. Tamondong filed a Reply to Comment⁹ reiterating the supposed flaws in Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184. According to Atty. Tamondong, there is no dispute as to the authorities cited by Judge Pasal in said Resolution and the only problem is the absence of facts and/or evidence for their application. Atty. Tamondong further argues that the appeal of Judge Pasal's Resolution before the Court of Appeals is not a barrier to the present administrative complaint against Judge Pasal since these two remedies can proceed independently and be resolved separately from one another. The administrative complaint concerns Judge Pasal's fitness to remain in the Judiciary and not the merits of Special Civil Action No. 2013-184. Atty. Tamondong additionally alleges that by being completely mum on the matter, Judge Pasal has impliedly admitted his failure to timely resolve the Motion for Reconsideration of Henmar.

⁷ Id. at 6.

⁸ Id. at 42-44.

⁹ Id. at 45-48.

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The Office of the Court Administrator (OCA), through Deputy Court Administrator Raul Bautista Villanueva, submitted a Memorandum¹⁰ dated June 7, 2016, recommending as follows:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

- a. The instant administrative complaint against Presiding Judge Emmanuel P. Pasal, Branch 38, Regional Trial Court, Cagayan de Oro City, be **RE-DOCKETED** as a regular administrative matter;
- b. Respondent Judge Pasal be found **GUILTY** of gross inefficiency and/or neglect of duty arising from undue delay in resolving a motion and be **FINED** in the amount of Two Thousand Pesos (PhP2,000.00) with a **WARNING** to be more punctilious in the observance of the reglementary periods for resolving pending motions in his court as a repetition of the same infraction shall be dealt with more severely; and
- c. The charge of gross ignorance of the law against respondent Judge Pasal is **DISMISSED** for being judicial in nature and for lack of merit.

The Court, in a Resolution¹¹ dated August 17, 2016, resolves, among other matters, to re-docket the instant administrative complaint as a regular administrative matter.

In their respective Manifestations,¹² the parties agree to already submit the administrative complaint for resolution based on the pleadings filed.

The Court fully adopts the findings and recommendations of the OCA.

***On the charge of gross ignorance
and/or gross incompetence***

There is no merit in Atty. Tamondong's charge of gross ignorance of the law and/or gross incompetence against Judge Pasal.

Atty. Tamondong's sole basis for his charge is Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 dismissing the Petition for *Certiorari* and Prohibition which Atty. Tamondong filed on behalf of his client, Henmar. In said Resolution, Judge Pasal determined that there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in denying the motion to dismiss of Henmar in Civil Case No. 2012-06-04. Atty. Tamondong though is adamant that the MTCC should have dismissed the complaint of

¹⁰ Id. at 53-58.

¹¹ Id. at 59.

¹² Judge Pasal's Manifestation dated January 11, 2017 (id. at 74) and Atty. Tamondong's Manifestation dated January 23, 2017 (id. at 66-67).

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Abada's heirs against Henmar in Civil Case No. 2012-06-04 on the grounds of (a) lack of jurisdiction over the person of Henmar; (b) lack of territorial jurisdiction over the subject property; and (c) lack of jurisdiction over a prescribed action.

Judge Pasal issued the Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 in the exercise of his adjudicative functions, and any errors he might have committed therein cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies.¹³ The issues of jurisdiction being argued by Atty. Tamondong are judicial matters, which again can only be decided upon through judicial remedies. A party's recourse, if prejudiced by a judge's orders in the course of a trial, is with the proper reviewing court and not with the OCA, through an administrative complaint.¹⁴

The Court declared that an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. The acts of a judge in his judicial capacity are not subject to disciplinary action. A judge cannot be civilly, criminally, or administratively liable for his official acts, no matter how erroneous, provided he acts in good faith.¹⁵

The Court also expounded in *Flores v. Abesamis*¹⁶ that:

As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The *ordinary remedies* against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The *extraordinary remedies* against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc.*) are *inter alia* the special civil action of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be.

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or supplementary of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or

¹³ *Maquiran v. Grageda*, 491 Phil. 205, 230 (2005).

¹⁴ *Biado v. Brawner-Cualing*, A.M. No. MTJ-17-1891 (formerly OCA IPI No. 15-2792-MTJ), February 15, 2017.

¹⁵ *Id.*

¹⁶ 341 Phil. 299, 312-313 (1997).

criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil, or administrative liability may be said to have opened, or closed.

In the present administrative complaint, Atty. Tamondong admitted that he already filed an appeal of Judge Pasal's Resolution dated December 23, 2013 in Special Civil Action No. 2013-184 before the Court of Appeals. Absent any showing that Atty. Tamondong has exhausted all available judicial remedies and that there is already an entry of judgment in the appropriate judicial action or proceeding, the Court cannot proceed to inquire herein into Judge Pasal's administrative liability in relation to said Resolution.

Moreover, Atty. Tamondong failed to offer proof that in issuing the Resolution dated December 23, 2013 in Special Civil Action No. 2013-184, Judge Pasal was acting in bad faith and unduly favoring Abada's heirs. Mere imputation of bias and partiality against a judge is insufficient because bias and partiality can never be presumed. Also, bad faith or malice cannot be inferred simply because the judgment is adverse to a party.¹⁷

***On the charge of gross inefficiency
and/or gross neglect of duty***

As for the other charge of gross inefficiency and/or gross neglect of duty, the Court finds Judge Pasal administratively liable for undue delay in resolving the Motion for Reconsideration of the Resolution dated December 23, 2013 filed by Atty. Tamondong, on behalf of Henmar, in Special Civil Action No. 2013-184.

Canon 6, Section 5 of the New Code of Judicial Conduct for the Philippine Judiciary¹⁸ mandates that "[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."

Decision-making is primordial among the many duties of judges. The speedy disposition of cases is the primary aim of the Judiciary, for only thereby may the ends of justice not be compromised and the Judiciary may be true to its commitment of ensuring to all persons the right to a speedy, impartial, and public trial. To pursue this aim, the Court, through the Rules of Court and other issuances, has fixed reglementary periods for acting on cases and matters.¹⁹

¹⁷ *Biado v. Brawner-Cualing*, supra note 14.

¹⁸ A.M. No. 03-05-01-SC, adopted on April 27, 2004.

¹⁹ *Sustento v. Lilagan*, A.M. No. RTJ-11-2275. March 8, 2016, 785 SCRA 612, 619.

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Under Rule 37, Section 4 of the Rules of Court, “[a] motion for new trial or reconsideration shall be resolved within thirty (30) days from the time it is submitted for resolution.”

After the filing by Henmar of its Motion for Reconsideration and Abada’s Heirs of their Opposition/Comment to the same, Judge Pasal issued an Order dated **February 24, 2014** submitting the said Motion for resolution. The 30-day period for resolution expired on **March 26, 2014**. However, Judge Pasal issued the Resolution denying the Motion for Reconsideration only on **June 17, 2014**, 113 days or almost four months after the submission of said Motion for resolution. Notably, Judge Pasal did not offer any explanation at all for the delay. It is, therefore, undeniable that there was undue delay on Judge Pasal’s part in resolving the Motion for Reconsideration.

As a frontline official of the Judiciary, Judge Pasal should act with efficiency and probity at all times.²⁰ Judge Pasal’s unexplained delay in resolving the Motion for Reconsideration is inexcusable, unwarranted, and unreasonable.²¹ Judge Pasal failed to heed the consistent reminder of the Court for judges to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of the people in the Judiciary, lowers its standards, and brings it into disrepute. Judge Pasal’s failure to resolve the Motion for Reconsideration within the 30-day reglementary period is not excusable and warrants the imposition of administrative sanctions upon him.²²

If Judge Pasal found himself unable to comply with the mandatory 30-day reglementary period for resolving the Motion for Reconsideration in Special Civil Action No. 2013-184, he could have asked the Court for a reasonable extension of time to do so. The Court is also aware of the heavy case load of trial courts, and has allowed reasonable extensions of time needed to decide cases or resolve pending incidents therein, but such extensions must first be requested from the Court. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law.²³ Yet, Judge Pasal made no such request for extension of time to resolve the Motion for Reconsideration of Henmar in Special Civil Action No. 2013-184.

²⁰ *Bancil v. Reyes*, A.M. No. MTJ-16-1869, July 27, 2016, 798 SCRA 450, 456.

²¹ *Sunico v. Gutierrez*, A.M. No. RTJ-16-2457 (formerly OCA IPI No. 14-4291-RTJ), February 21, 2017.

²² *Re: Cases Submitted for Decision before Hon. Teofilo D. Baluma, Former Judge, Branch 1, Regional Trial Court, Tagbilaran City, Bohol*, 717 Phil. 11, 17 (2013).

²³ *Id.*

Pursuant to the latest amendments to Rule 140²⁴ of the Rules of Court, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than Ten Thousand Pesos (₱10,000.00), but not more than Twenty Thousand Pesos (₱20,000.00).

Taking into account Judge Pasal's seven years of continuous service to the Judiciary and his subsequent, albeit delayed, resolution of the Motion for Reconsideration, the Court agrees with the OCA that the imposition of a fine of Two Thousand Pesos (₱2,000.00) upon Judge Pasal would already suffice.

WHEREFORE, the administrative complaint for gross ignorance of the law and/or gross incompetence against Judge Emmanuel P. Pasal, Presiding Judge of the Regional Trial Court, Cagayan de Oro City, Branch 38, is **DISMISSED** for being judicial in nature. However, Judge Emmanuel P. Pasal is found **GUILTY** for his undue delay in the resolution of the Motion for Reconsideration of the Resolution dated December 23, 2013 filed by Henmar Development Property, Inc. in Special Civil Action No. 2013-184, for which he is **FINED** in the amount of Two Thousand Pesos (₱2,000.00).

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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Section 9(1) in relation to Section 11(B); *En Banc* Resolution in A.M. No. 01-8-10-SC dated September 11, 2001 (*Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges*).


MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

On official leave
NOEL GIMENEZ TIJAM
Associate Justice