Republic of the Philippines
Supreme Court
Manila

EN BANC

ETHELWOLDO E. FERNANDEZ, ANTONIO A. HENSON and ANGEL S. ONG, Complainants,	**A.M. OCA IPI No. 12-201-CA-J**
- versus -	Present: SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, and LEONEN, *JJ.*
COURT OF APPEALS ASSOCIATE JUSTICES RAMON M. BATO, JR., ISAIAS P. DICDICAN and EDUARDO B. PERALTA, JR., Respondents.	Promulgated: **FEBRUARY 19, 2013**

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RESOLUTION

REYES, *J.*:

Before us is a verified Joint Complaint-Affidavit[1] filed against Court of Appeals (CA) Associate Justices Ramon M. Bato, Jr. (Justice Bato), Isaias

[1] *Rollo*, pp. 2-45.

P. Dicdican (Justice Dicdican) and Eduardo B. Peralta, Jr. (Justice Peralta), all members of the former Special 14th Division, charging them with grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality.

The complaint alleges that in a Resolution[2] dated June 13, 2012, Justice Bato, who was designated on May 31, 2012 by raffle as acting senior member of the aforesaid Division, *vice* the regular senior member, Associate Justice Jane Aurora C. Lantion (Justice Lantion), who was scheduled to take a 15-day wellness leave from June 1-15, 2012, "usurped" the office of *ponente* in four (4) consolidated petitions before the CA, namely, CA-G.R. Nos. 122782, 122784, 122853, and 122854. Notwithstanding that the said cases have been previously assigned to Justice Lantion, Justice Bato acted on unverified motions to resolve the petitioners' application for a writ of preliminary injunction, and granted the same, without conducting a prior hearing, with the connivance of the respondents as regular members of the Division; instead of the said regular members acting on the motions themselves.

Antecedent Facts

Complainants Ethelwoldo E. Fernandez (Fernandez) and Antonio A. Henson were elected in August 2010 to the Board of Directors (Board) of the Nationwide Development Corporation (NADECOR), a domestic corporation organized in 1956, which owns a gold-copper mining concession in Pantukan, Compostela Valley called *King-King Gold and Copper Mine* (King-King Mine), while complainant Angel S. Ong was among those elected to NADECOR's Board at its stockholders' meeting held on June 13, 2012.

At the regular annual stockholders' meeting held on August 15, 2011, wherein 94% of NADECOR's outstanding shares was represented and voted, two groups of stockholders were vying for control of the company, one group led by Jose G. Ricafort (JG Ricafort) who then personally controlled 42% of the issued shares, and the other group led by Conrado T. Calalang (Calalang), who owned 33%. Elected to the Board were Calalang, Jose, Jose P. De Jesus (De Jesus), Roberto R. Romulo (Romulo), Alfredo I. Ayala (Ayala), Victor P. Lazatin, Fernandez, Leocadio Nitorreda (Nitorreda), and John Engle (Engle). Later elected as Corporate Secretary was Luis Manuel L. Gatmaitan (Gatmaitan).

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[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Isaias P. Dicdican and Eduardo B. Peralta, Jr., concurring; id. at 48-55.

On October 20, 2011, two months after the August 15, 2011 stockholders' meeting, Corazon H. Ricafort (CH Ricafort), Jose Manuel H. Ricafort (JM Ricafort), Marie Grace H. Ricafort (MG Ricafort), and Maria Teresa R. Santos (MT Santos) (plaintiffs Ricafort), wife and children of JG Ricafort, claiming to be stockholders of record, sought to annul the said meeting by filing SEC Case No. 11-164 in the Regional Trial Court (RTC) of Pasig City, Branch 159. Impleaded as defendants were NADECOR, the members of the incumbent Board, and the Corporate Secretary, Gatmaitan.

The plaintiffs Ricafort alleged that they were not given prior notice of the August 15, 2011 stockholders' meeting, and thus failed to attend the same and to exercise their right to participate in the management and control of NADECOR; that they were served with notice only on August 16, 2011, a day after the meeting was held, in violation of the 3-day prior notice provided in NADECOR's Bylaws; and that moreover, the notice announced a time and venue of the meeting different from those set forth in the Bylaws. The plaintiffs Ricafort therefore asked the RTC to declare null and void the August 15, 2011 annual stockholders' meeting, including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto.

On November 18, 2011, Gatmaitan filed his Answer to the complaint in SEC Case No. 11-164; Calalang, Romulo, Ayala, Fernandez, Engle and Nitorreda filed theirs on November 21, 2011; and NADECOR filed its Answer on November 23, 2011. On November 30, 2011, the plaintiffs Ricafort filed their Answer to the Compulsory Counterclaims.

In the Order dated December 21, 2011, the RTC agreed with the plaintiffs Ricafort that they were not given due notice of the annual stockholders' meeting of NADECOR, and that their complaint did not involve an election contest, and therefore was not subject to the 15-day prescriptive period to file an election protest.[3] The *fallo* of the Order reads, as follows:

> ***IN VIEW OF THE FOREGOING***, this Court ***GRANTS***, as it hereby ***GRANTS*** the relief prayed for in the Complaint and DEN[IES] all compulsory counterclaims for lack of merit. Consequently, Nationwide Development Corporation's 2011 Annual Stockholders' Meeting held on August 15, 2011 is hereby declared NULL and VOID, including ALL matters taken up during said Annual Stockholders' Meeting. Any other acts, decisions, deeds, incidents, matters taken up arising from and subsequent to the 2011 Annual Stockholders' Meeting are hereby likewise declared ***VOID and OF NO FORCE and EFFECT***.

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[3] See Interim Rules of Procedure on Intra-Corporate Controversies, Rule 6.

> Defendant Nationwide Development Corporation is hereby directed to: (a) issue a new notice to all stockholders for the conduct of an annual stockholders' meeting corresponding to the year 2011 since the annual stockholders' meeting held on August 15, 2011 was declared VOID, ensuring their receipt within three (3) days from the intended date of the annual meeting[;] and (b) hold the annual stockholders meeting within thirty (30) days from receipt of this Order.
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> No pronouncements as to cost.
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> SO ORDERED.[4] (Citation omitted and italics, and emphasis in the original)

Four separate petitions for *certiorari* were forthwith filed in the CA by some members of the new Board and by NADECOR to assail the validity of the RTC order, all with application for a temporary restraining order (TRO) and/or a writ of preliminary injunction, namely:

(a) **CA-G.R. SP No. 122782** - filed on January 5, 2012 by Director Romulo versus CH Ricafort, JM Ricafort, MG Ricafort and MT Santos (respondents Ricafort). The case was raffled to Justice Lantion, senior member of the 15th Division; the chairman of the Division was Justice Dicdican, while Justice Angelita A. Gacutan (Justice Gacutan) was the junior member.

(b) **CA-G.R. SP No. 122784** - filed on January 5, 2012 by Directors Calalang, Ayala, Engle and Nitorreda versus the respondents Ricafort. Justice Agnes Reyes-Carpio (Justice Reyes-Carpio) of the 11th Division was the *ponente*.

(c) **CA-G.R. SP No. 122853** - filed on January 6, 2012 by NADECOR versus the respondents Ricafort. Justice Samuel Gaerlan of the 6th Division was the *ponente*.

(d) **CA-G.R. SP No. 122854** - filed on January 6, 2012 by Gatmaitan versus the respondents Ricafort. Justice Rosalinda Asuncion-Vicente of the 9th Division was the *ponente*.

On January 16, 2012, the 15th Division of the CA denied the application for TRO and/or preliminary injunction in CA-G.R. SP No. 122782. On the same day, however, the 11th Division issued a TRO in CA-G.R. SP No. 122784,[5] stating that the three (3) conditions for the issuance of an injunctive relief were present in the said petition, namely: (a) the right to be protected exists *prima facie*; (b) the act sought to be enjoined is violative of that right; and (c) there is an urgent and paramount necessity for the writ

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4 *Rollo*, pp. 76-77.

5 Id. at 181-187.

to prevent serious damage. The *fallo* of the Resolution of the 11th Division reads:

> **WHEREFORE**, in view of the foregoing, pending the determination by this Court of the merits of the Petition, the Court **GRANTS** petitioners' prayer for the issuance of a temporary restraining order (TRO), to prevent the implementation and execution of the assailed Order dated December 21, 2011 of the Regional Trial Court, Branch 159, Pasig City.
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> The **TRO** is conditioned upon the filing by the petitioners of the **bond** in the amount of ***ONE HUNDRED THOUSAND ([₱]100,000.00) PESOS*** each, which shall answer for whatever damages *that* [respondents Ricafort] may incur in the event that the Court finds petitioners not entitled to the injunctive relief issued. The **TRO** shall be **effective for sixty (60) days** upon posting of the required bond unless earlier lifted or dissolved by the Court.
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> During the effectivity of the TRO, the Board of Directors elected and serving before the August 15, 2011 Stockholders['] Meeting shall discharge their functions as Directors in a hold-over capacity in order to prevent any hiatus and so as not to unduly prejudice the corporation.
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> Respondents are **REQUIRED** to submit their Comment to petitioners' Petition and why a writ of preliminary injunction should not be issued within **TEN (10) days** from notice, and petitioners, their Reply thereon, within **FIVE (5) days** from receipt of the said Comment.
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> **SO ORDERED**.[6]

In light of the declaration by the RTC that the August 15, 2011 stockholders' meeting was "VOID and OF NO FORCE and EFFECT," the 11th Division ordered the preceding Board, elected in August 2010 (Old Board) to take over the company in a hold-over capacity during the effectivity of the TRO, "to prevent any hiatus and so as not to unduly prejudice the corporation," and until a new Board was elected in a stockholders' meeting to be called by the Old Board. The new Board, which entered into its duties on August 15, 2011 (New Board), had to cease acting and give way to the hold-over Board.

On February 8, 2012, the 15th Division ordered the consolidation of all four CA petitions. On February 24, 2012, the 9th Division also ordered the consolidation of CA-G.R. SP No. 122854 with CA-G.R. SP No. 122782. On March 9, 2012, the 11th Division approved the consolidation of CA-G.R. SP CA-G.R. No. 122784 with CA-G.R. SP No. 122782. The assailed Resolution[7] dated June 13, 2012 of the Special 14th CA Division includes in its caption CA-G.R. SP No. 122853, implying that the 6th Division had also

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6 Id. at 186-187.

7 Id. at 48-55.

agreed to the consolidation.

On February 17, 2012, the respondents Ricafort filed their ***Comment Ad Cautelam***[8] to the petition in CA-G.R. No. 122784. The petitioners therein thereafter filed three (3) urgent motions to resolve their application for writ of preliminary injunction, on March 8,[9] on May 22,[10] and again on June 6, 2012[11]. However, after the lapse of the 60-day TRO but before the CA could resolve the application for writ of preliminary injunction, Deogracias G. Contreras, Corporate Secretary of the Old Board who replaced Gatmaitan, issued on June 6, 2012 a Notice of Annual Stockholders' Meeting to be held at the Jollibee Centre in Ortigas on June 13, 2012 at 12:30 p.m. The notice was published on June 7, 2012 in *The Philippine Star,*[12] and two of the main purposes of the meeting were:

> (a) The ratification of the rescission by the Old Board of NADECOR's Memoranda of Understanding (MOUs) with the *St. Augustine Gold & Copper Ltd.* and the *St. Augustine Mining, Ltd*., (St. Augustine), both dated April 27, 2010; and
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> (b) The ratification of the sale of unissued shares of NADECOR comprising 25% of its authorized capital stock (for ₱1.8 billion) to a new investor, Queensberry Mining and Development Corporation (Queensberry), later disclosed as controlled by the Group of Senator Manuel Villar.

On the same day, the petitioners in CA-G.R. SP No. 122784 filed a Supplement to the Third Urgent Motion to Resolve with Manifestation[13] dated June 7, 2012, contending that the rescission of NADECOR's MOUs with St. Augustine would result in grave and irreparable injury to it since St. Augustine alone had the financial and technical capability to develop its 1,656-hectare area mining claim in Pantukan, Compostela Valley. NADECOR thus risked having its Mineral Production Sharing Agreement (MPSA) with the government, its only valuable asset, revoked by the Department of Environment and Natural Resources (DENR).

On June 13, 2012 at 12:30 p.m., the announced annual meeting of NADECOR's stockholders was held at the Jollibee Center in Ortigas as scheduled, with Calalang chosen as presiding officer. Midway through the meeting, however, Calalang received a facsimile copy of the now assailed

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8 Id. at 188-237.
9 Id. at 238-244.
10 Id. at 252-260.
11 Id. at 261-277.
12 Id. at 90.
13 Id. at 278-286.

Resolution of the CA's Special 14th Division, bearing the day's date. On motion, Calalang declared the meeting adjourned in view of the injunctive writ granted by the CA. But he was overruled by the stockholders and directors holding 64% of the shares, and Calalang and his group walked out of the assembly. The stockholders who remained in the meeting ignored the writ and the meeting resumed, with President De Jesus now presiding. In the meeting, the following were taken up: the election of the new Board; the ratification of the rescission by the Old Board of NADECOR's MOUs with the St. Augustine; and the ratification of the subscription of Queensberry to 25% of the capital stock of NADECOR.

The Writ of Preliminary Injunction

The assailed Resolution of the Special 14th Division of the CA granting the writ of preliminary injunction reads:

> ***WHEREFORE***, premises considered, the application for a writ of preliminary injunction is ***GRANTED***. Let a writ of preliminary injunction be issued enjoining the implementation of the Order dated December 21, 2011 of the Regional Trial Court of Pasig City, Branch 159 and allowing the Board of Directors elected during the August 15, 2011 [stockholders' meeting] to continue to act as Board of Directors of NADECOR.
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> Likewise, the parties, including the hold-over Board of Directors elected and acting before the August 15, 2011 Stockholders' Meeting are enjoined and prohibited from acting as hold-over board and from scheduling and holding any stockholders' meeting, including the scheduled June 13, 2012 stockholders' meeting. Any effects of said June 13, 2012 stockholders' meeting, including the ratification of the rescission of all MOUs dated April 27, 2010 and Related Transaction Agreements between NADECOR and St. Augustine Gold and Copper, Ltd. and St. Augustine Mining, Ltd., the election of any new Board of Directors and their acting as such thereafter and the sale and ratification of the sale of Unissued Certificates of Shares of NADECOR constituting 25% of its authorized capital stock to Queensberry are also hereby enjoined.
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> Petitioners are thus mandated to post a bond of Five Hundred Thousand Pesos ([₱]500,000.00) to answer for any damages which may result by virtue of the writ of preliminary injunction.
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> ***SO ORDERED***.[14]

Significantly, the Resolution enjoined the Old Board from acting as a hold-over Board, thereby contravening the TRO issued by the 11th Division. It then allowed the New Board "to continue to act as Board of Directors of NADECOR." It also enjoined the holding of a stockholders' meeting on June 13, 2012, and ordered a freeze in the enforcement of all actions taken at

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14 Id. at 54-55.

the said meeting. In particular, the CA enjoined the ratification of the rescission of all MOUs and related Transaction Agreements with the St. Augustine, the election of a new Board of NADECOR, and the ratification of the sale to Queensberry of 25% of NADECOR's authorized capital stock, which would come from its unissued shares.

The CA Resolution was penned by Justice Bato, the acting senior member of the Special 14th Division (formerly 15th Division, following an internal CA reorganization), *vice* Justice Lantion who was on a 15-day wellness leave. Concurred in by Justices Dicdican and Peralta, the Resolution cited "new and subsequent matters" allegedly not contemplated in the RTC's Order dated December 21, 2011, like the rescission of NADECOR's MOUs with the St. Augustine, and the ratification of the 25% subscription of Queensberry. The CA reasoned that the above actions of the Board could have injurious consequences on the future viability of NADECOR, even as they were not intended to merely "prevent a hiatus [in the operations of NADECOR] and so as not to unduly prejudice the corporation." The CA thus determined that the petitioners, as stockholders and members of the Board elected on August 15, 2011, have a right in *esse* to seek the preservation of the only valuable property of NADECOR, its MPSA covering the *King-King Mine* in Compostela Valley. Since, according to the CA, the St. Augustine possessed technical and financial capabilities to develop the said mine, the rescission of the MOUs could lead to the recall of the MPSA by the government, to NADECOR's grave and irreparable injury.

The CA further stated that the June 13, 2012 stockholders' meeting would render moot and academic the four consolidated CA petitions, since a new Board would effectively supplant the one elected on August 15, 2011, although the validity of the latter was still being contested in the CA.

Administrative Case versus CA Justices

On July 3, 2012, the herein complainants filed with the Supreme Court a Petition for *Certiorari* and Prohibition, G.R. No. 202257, seeking to annul the writ of preliminary injunction issued by the CA's Special 14th Division. However, in a Resolution[15] dated July 18, 2012 in **G.R. No. 202257-60**, entitled "*Ethelwoldo E. Fernandez, Antonio A. Henson, and Angel S. Ong v. Court of Appeals (14th Division), et al.,*" the Supreme Court dismissed the complainants' petition for lack of personality because they were non-parties and strangers to the consolidated CA petitions.

On July 9, 2012, the complainants also filed with this Court the present Administrative Case, A.M. OCA IPI No. 12-201-CA-J, against the

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15 Id. at 300-303.

members of the former Special 14th Division of the CA, namely: Justices Dicdican, Chairman; Bato, Senior Member; and Peralta, Junior Member. On August 28, 2012, the Court directed the respondent CA Justices to file their Comment to the administrative complaint 10 days from notice. Justices Bato and Peralta filed a joint Comment, while Justice Dicdican filed a separate Comment, both on October 18, 2012. On October 29, 2012, Justices Dicdican, Bato, and Peralta filed a joint Supplemental Comment with Very Urgent Motion to Dismiss.[16]

It is alleged in this administrative complaint that the respondent Justices are guilty of grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality, to wit:

> (a) They acted upon the unverified "Third Motion to Resolve" and "Supplement to the Third Urgent Motion to Resolve with Manifestation" in CA-G.R. SP No. 122784, which contained new factual matters, and then issued a writ of preliminary injunction, without notice and hearing as required in Section 5 of Rule 58;
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> (b) It was irregular for Justice Bato, who sat as acting senior member *vice* the regular *ponente*, Justice Lantion, who was on a 15-day leave of absence (later extended by 10 days), to have penned the questioned Resolution notwithstanding that the consolidated CA Petitions had not been re-raffled to him.
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> (c) Granting that the issuance of a writ of preliminary injunction was a matter of extreme urgency, Section 5 of Rule VI of the Internal Rules of the CA (IRCA) authorizes the two present regular Division members, Justices Dicdican and Peralta, to act on the application, not Justice Bato.
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> (d) The effect of the writ of preliminary injunction is not to merely preserve the *status quo* but to dispose of the main case on the merits.

Our Ruling

We dismiss the complaint.

Rule 140 of the Rules of Court provides the procedure for the discipline of Justices of the CA and the Sandiganbayan and Judges of

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16 Id. at 296-299.

regular and special courts.

Under Rule 140,[17] there are three ways by which administrative proceedings may be instituted against justices of the CA and the Sandiganbayan and judges of regular and special courts: (1) *motu proprio* by the Supreme Court; (2) upon verified complaint (as in this complaint) with affidavits of persons having personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an anonymous complaint supported by public records of indubitable integrity.[18]

In this verified administrative complaint, the essential facts comprising the conduct of the respondent Justices of the CA complained of are not disputed, and are verifiable from the copies of orders and pleadings attached to the complaint and to the comments of the respondent Justices. There is, thus, no need to assign the matter to a retired member of the Supreme Court for evaluation, report, and recommendation.

The pertinent provisions of the 2009 IRCA relevant to the instant administrative complaint are Sections 2(d), 4 and 5 of Rule VI, quoted below as follows:

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[17] RULES OF COURT, Rule 140. Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan.

Sec. 1. *How instituted.*—Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Sec. 2. *Action on the complaint.*—If the complaint is sufficient in form and substance, a copy thereof shall be served upon the respondent, and he shall be required to comment within ten (10) days from the date of service. Otherwise, the same shall be dismissed.

Sec. 3. *By whom complaint investigated.*—Upon the filing of the respondent's comment, or upon the expiration of the time for filing the same and unless other pleadings or documents are required, the Court shall refer the matter to the Office of the Court Administrator for evaluation, report, and recommendation or assign the case for investigation, report, and recommendation to a retired member of the Supreme Court, if the respondent is a Justice of the Court of Appeals and the *Sandiganbayan*, or to a Justice of the Court of Appeals, if the respondent is a Judge of a Regional Trial Court or of a special court of equivalent rank or, to a Judge of the Regional Trial Court if the respondent is a Judge of an inferior court.

Sec. 4. *Hearing.*—The investigating Justice or Judge shall set a day for the hearing and send notice thereof to both parties. At such hearing, the parties may present oral and documentary evidence. If, after due notice, the respondent fails to appear, the investigation shall, proceed *ex parte.*

The Investigating Justice or Judge shall terminate the investigation within ninety (90) days from the date of its commencement or within such extension as the Supreme Court may grant.

Sec. 5. *Report.*—Within thirty (30) days from the termination of the investigation, the investigating Justice or Judge shall submit to the Supreme Court a report containing findings of fact and recommendation. The report shall be accompanied by the record containing the evidence and the pleadings filed by the parties. The report shall be confidential and shall be for exclusive use of the Court.

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[18] *Sinsuat v. Hidalgo,* A.M. No. RTJ-08-2133, August 6, 2008, 561 SCRA 38, 46.

Sec. 2. *Justices Who May Participate in the Adjudication of Cases*.—

x x x x

> (d) When, in an original action or petition for review, any of the following proceedings has been taken, namely: (i) giving due course; (ii) granting temporary restraining order, writ of preliminary injunction, or new trial; (iii) granting an application for writ of *habeas corpus, amparo*, or *habeas data*; (iv) granting an application for a freeze order; and (v) granting judicial authorization under the Human Security Act of 2007, the case shall remain with the Justice to whom the case is assigned and the Justices who participated therein, regardless of their transfer to other Divisions in the same station. x x x.

Sec. 4. *Hearing on Preliminary Injunction*.—The requirement of a hearing on an application for preliminary injunction is satisfied with the issuance by the Court of a resolution served upon the party sought to be enjoined requiring him to comment on said application within a period of not more than ten (10) days from notice. Said party may attach to his comment documents which may show why the application for preliminary injunction should be denied. The Court may require the party seeking the injunctive relief to file his reply to the comment within five (5) days from receipt of the latter.

If the party sought to be enjoined fails to file his comment as provided for in the preceding paragraph, the Court may resolve the application on the basis of the petition and its annexes.

The preceding paragraphs notwithstanding, the Court may, in its sound discretion, set the application for a preliminary injunction for hearing during which the parties may present their respective positions or submit evidence in support thereof.

Sec. 5. *Action by a Justice*.—All members of the Division shall act upon an application for temporary restraining order and preliminary injunction. However, if the matter is of extreme urgency and a Justice is absent, the two other Justices shall act upon the application. If only the *ponente* is present, then he/she shall act alone upon the application. The action of the two Justices or of the *ponente* shall, however, be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

Justice Bato, sitting as acting senior member of the Special 14th Division of the CA, had authority to act on the urgent motions to resolve the petitioners' application for writ of preliminary injunction.

Firstly, it must be stated that the designation of Justice Bato by raffle as acting senior member of the 14th Division, *vice* Justice Lantion who went on a 15-day wellness leave from June 1-15, 2012, was valid, transparent and regular (Justice Lantion later extended her official leave to a total of 25 days). The raffle to fill the extended absence of Justice Lantion was held on May 31, 2012, witnessed by the members of the CA's Raffle Committee, namely, Justices Magdangal De Leon, Francisco P. Acosta, and Gacutan. Office Order No. 201-12-ABR,[19] signed by Presiding Justice Andres B. Reyes, Jr., reads:

> In view of the leave of absence (*Wellness Program*) of Justice JANE AURORA C. LANTION, regular senior member of the FOURTEENTH DIVISION, Justice RAMON M. BATO, JR. has been designated by the Raffle Committee as the acting senior member of the FOURTEENTH DIVISION, in addition to his duties as regular senior member of the SECOND DIVISION, to act on all cases submitted to the FOURTEENTH DIVISION, for final resolution and/or appropriate action, ***except ponencia***, from ***June 1 to 15, 2012*** or until Justice Lantion reports back for duty.
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> **THIS HOLDS TRUE WITH THE OTHER DIVISION/S WHEREIN JUSTICE JANE AURORA C. LANTION PARTICIPATED OR TOOK PART AS REGULAR MEMBER OR IN AN ACTING CAPACITY.**[20]

Note too, that the third urgent motion in CA-G.R. SP No. 122784 to resolve the application for writ of preliminary injunction[21] was filed on June 6, 2012, with Justice Bato now sitting as acting member of the 14th Division. On June 7, 2012, the complainants filed a supplement to their said third urgent motion.[22] On June 8, 2012, a Friday, the consolidated petitions were forwarded to Justice Bato, per Re-agendum issued by the Division Clerk of Court, Attorney Michael F. Real (Atty. Real).[23] Since the meeting of NADECOR's stockholders was scheduled on June 13, 2012, a Wednesday, it will readily be seen that there was no time for Justice Bato to set for hearing the application for writ of preliminary injunction.

The complainants argue, citing Section 5, Rule VI of IRCA, that with the absence of Justice Lantion, the original *ponente* of the consolidated CA petitions, only the regular 14th Division members present, that is, Justices Dicdican and Peralta, could validly act on the Calalang group's urgent application for preliminary injunction. Noting that Office Order No. 201-12-ABR limited Justice Bato's authority as acting member of the 14th Division only "to act on all cases submitted to the FOURTEENTH

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19 *Rollo*, p. 287.
20 Id.
21 Id. at 261-277.
22 Id. at 278-286.
23 See Note 1 of the CA Resolution dated June 13, 2012; id. at 49.

DIVISION for final resolution and/appropriate action, ***except ponencia,"*** they reason that since Justice Bato penned the Resolution of a motion for injunctive relief in the consolidated petitions whose assigned *ponente* was Justice Lantion, he was in effect "usurping" the office of the *ponente* of the said cases, in gross violation of the IRCA.

That there was no re-raffle of the consolidated CA petitions to a new *ponente* is not denied, but rather only a designation of Justice Bato to sit as acting senior member of the 14th Division *vice* Justice Lantion. But because of the urgent nature of the application for writ of preliminary injunction, which was an offshoot of the consolidated CA petitions, and the assigned *ponente* thereof, Justice Lantion, was on a wellness leave, the Clerk of Court of the 14th Division, Atty. Real, transferred the said cases to Justice Bato, the acting senior member temporarily sitting in the place of the original *ponente*, Justice Lantion, so that he could promptly attend to the urgent motion.

There is nothing in the IRCA which would have required the Division Clerk of Court to transmit the urgent motion for action only to the two present regular members of the 14th Division, as the complainants seem to believe. We agree with Justice Dicdican that the complainants would have been correct if the absent member of the Division was not the *ponente* herself but either of the other members. This implies that the *ponente* if present can act upon the urgent motion alone or with another member present, provided that the action or resolution "is submitted on the next working day to the absent member or members of the Division for ratification, modification or recall."

The complainants need to realize that a preliminary injunction is not a *ponencia* but an order granted at any stage of an action *prior* to final judgment, requiring a person to refrain from a particular act. It is settled that as an ancillary or preventive remedy, a writ of preliminary injunction may be resorted to by a party to protect or preserve his rights and for no other purpose during the pendency of the principal action. Its object is to preserve the *status quo* until the merits of the case are passed upon. It is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit.[24] On the other hand, *ponencia* refers to the rendition of a decision in a case on the merits, which disposes of the main controversy. In this case, the main issue in the four CA petitions is the validity of the RTC's Order dated December 21, 2011 declaring as void and of no effect NADECOR's stockholders' meeting on August 15, 2011. Contrary to the complainants' insistence, the writ of preliminary injunction issued by the 14th Division in CA-G.R. SP No. 122784 did not settle the controversy therein, but is a mere interlocutory order to restore the *status quo ante,* that is, the state of things prior to the RTC's Order of December 21, 2011.

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[24] *Mabayo Farms, Inc. v. CA and Antonio Santos*, 435 Phil. 112, 118 (2002).

That Justice Bato was expected to act on the urgent motion to resolve in CA-G.R. SP No. 122784 is clearly implied from the instruction contained in Office Order No. 201-12-ABR. It authorized him to act "*on all cases submitted to the FOURTEENTH DIVISION for final resolution and/or appropriate action, except ponencia, from June 1 to 15, 2012 or until Justice Lantion reports back for duty.*"[25] The Office Order also states that the said authority "*HOLDS TRUE WITH THE OTHER DIVISION/S WHEREIN JUSTICE JANE AURORA C. LANTION PARTICIPATED OR TOOK PART AS REGULAR MEMBER OR IN AN ACTING CAPACITY.*"

As a provisional remedy, the timing of the grant of a writ of preliminary injunction is clearly of the essence, except that in this case the *ponente* was on an extended leave of absence and would have been unable to act thereon seasonably. It cannot be gainsaid from the above Order that an acting member of a Division, like a regular member, has full authority to act on any and all matters presented to the Division for "final resolution and/or appropriate action," which surely includes an urgent application for a writ of preliminary injunction. Expressly excepted under the IRCA is the acting member rendering a *ponencia* in a case assigned or raffled for study and report to the absent Division member, whom the acting member is temporarily substituting in the Division.

Section 4, Rule VI of the 2009 IRCA provides that the requirement of a hearing for preliminary injunction is satisfied with the issuance of a resolution requiring the party sought to be enjoined to comment on the application within 10 days from notice.

The complainants maintain that Justice Bato should first have set petitioners' application for a writ of preliminary injunction for hearing before granting the same, as provided in Section 5 of Rule 58 of the Rules of Court. We have already noted that there was no time to do this, because Justice Bato received the *rollos* of the consolidated CA petitions only on June 8, 2012, a Friday, and the stockholders' meeting was set for the very next Wednesday, June 13, 2012.

Section 4 of Rule VI of the 2009 IRCA provides that "*[T]he requirement of a hearing for preliminary injunction is satisfied with the issuance of a resolution served upon the party sought to be enjoined*

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[25] *Rollo*, p. 287.

requiring him to comment on the said application within the period of not more than ten (10) days from notice."

As discussed below, the CA was justified in dispensing with the requisite hearing on the application for injunctive writ, since the so-called "new and substantial matters" raised in the third urgent motion in CA-G.R. SP No. 122784 and in the supplement thereto were in fact not previously unknown to respondents Ricafort, and they had already been previously ordered to comment on the said application, at the time when the said "subsequent" matters were already obtaining.

In its Resolution dated January 16, 2012 granting a TRO in CA-G.R. SP No. 122784, the CA 11th Division through Justice Reyes-Carpio found that the three conditions for the issuance of an injunctive relief in favor of petitioners Calalang, Ayala, Engle, and Nitorreda were present, namely: "(a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage."[26] It thus ordered respondents Ricafort to file their Comment to the petition 10 days from notice and to explain "why a writ of preliminary injunction should not be issued." In compliance with the said order, on February 17, 2012, respondents Ricafort filed their *Comment Ad Cautelam.*[27] The petitioners thereafter filed three (3) urgent motions to resolve their application for preliminary injunction.

The first urgent motion,[28] filed on March 8, 2012, called attention to a special board meeting of the Old Board on March 7, 2012 concerning, among others, the appointment of new bank signatories and the need to establish NADECOR's official position *vis-á-vis* St. Augustine's non-remittance of US$200,000.00 allegedly demanded under their June 28, 2011 agreement. The group of Calalang feared that the Old Board was committing acts not contemplated in its hold-over authority, since they were "overhauling the management and business operations of NADECOR."

The petitioners' second urgent motion,[29] filed on May 22, 2012, cited a letter of JG Ricafort and De Jesus to St. Augustine notifying them that NADECOR was rescinding its MOUs/Transaction Agreements with them. The Calalang group insisted that this act would be injurious to NADECOR, since allegedly St. Augustine alone had the technical know-how and funds to develop the *King-King Mine.*

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26 Id. at 78.
27 Id. at 188-237.
28 Id. at 238-244.
29 Id. at 252-260.

The third urgent motion of petitioners,[30] filed on June 6, 2012, mentioned a special meeting of the Old Board held on June 1, 2012 which approved the subscription and recording of new shares in the name of Queensberry, and the calling of a stockholders' meeting to ratify the said subscription and to elect the new Board. The petitioners expressed surprise that the subscription of Queensberry had already been recorded in the books, and insisted that the election of a new Board would render moot their CA petitions and application for a writ of preliminary injunction.

On June 7, 2012, the petitioners filed a "Supplement to the Third Urgent Motion to Resolve with Manifestation,"[31] citing an announcement that same day in *The Philippine Star* calling for an annual stockholders' meeting on June 13, 2012 to elect a new Board and to ratify the rescission of the MOUs with St. Augustine and the subscription of Queensberry.

The complainants now insist that the petitioners' "Third Urgent Motion to Resolve" application for preliminary injunction as well as their "Supplement to the third Urgent Motion to Resolve with Manifestation" in the four CA cases were unverified. No hearing was also held on the alleged new and substantial matters raised therein, yet as early as in the TRO Resolution dated January 16, 2012, the 11th Division already took into consideration the matter of a threat by NADECOR of rescission of its MOUs with St. Augustine. The CA also mentioned a letter from St. Augustine threatening to withdraw its "intended investment of around $2.5 Billion into the mining operations of NADECOR" because NADECOR "has 'no unquestioned board' to act on the conditions it set forth in its letter dated December 16, 2011."[32]

The TRO resolution also cited the claim of NADECOR that it needed to submit to the DENR its Mining Project Feasibility Plan (MPFP) by May 5, 2012, or risk losing both its investment in the Pantukan mine and potential foreign investments. The MPFP depended on the completion of the Bankable Financial Statement, which was funded by St. Augustine, and they were now threatening to cut off their funding.

Lastly, the CA 11th division noted that the plaintiffs Ricafort could not be ignorant of the August 15, 2011 meeting. The plaintiffs were the wife and children of JG Ricafort, who was then the NADECOR President, and JG Ricafort and CH Ricafort still lived as husband and wife in the same house at No. 8 Postdam Street, Northeast Greenhills, San Juan.[33] The CA also noted that the plaintiffs Ricafort executed proxies and nominee agreements

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30 Id. at 261-277.
31 Id. at 278-286.
32 Id. at 77-78.
33 Id. at 222.

in favor of JG Ricafort, as well as cited an affidavit of Raymond H. Ricafort, a son of JG Ricafort and CH Ricafort, that his mother CH Ricafort and his siblings had known about the August 15, 2011 stockholders' meeting, and that his mother never went to any of the stockholders' meetings of NADECOR.

From the foregoing, it will be seen that the CA Special 14th Division needed only to rely on the TRO resolution of the 11th Division as well as on the *Comment Ad Cautelam* of respondents Ricafort to find a basis to issue its preservative writ of preliminary injunction, and whether the third urgent motion of petitioners and their supplement thereto were verified, or whether a hearing was held thereon, were immaterial to the issuance of the writ.

The members of the Special 14th Division acted collectively and in good faith and their Resolution granting a writ of preliminary injunction in the consolidated CA petitions enjoys a presumption of regularity.

The CA 11th Division conceded that the petitioners in CA-G.R. SP No. 122784 have reason to maintain the validity of the August 15, 2011 stockholders' meeting. It agreed that the voiding of the said meeting might seriously derail any necessary corporate actions needed on the demands of the St. Augustine, which could lead to serious delays in the development of the Pantukan mine, and eventually the recall by the DENR of its MPSA. Thus, the CA feared that serious damage could result to NADECOR and the stockholders' investments if in fact St. Augustine had the resources and the willingness to develop its gold-copper mine.

It is not denied that the group of Jose worked for the rescission of the MOUs with the St. Augustine group and facilitated the entry of Villar's company. Calalang and his group opposed the contemplated actions of JG Ricafort and his camp, and wanted to retain the MOUs with St. Augustine, because they believed the exit of the St. Augustine group would have serious repercussions on the attractiveness of NADECOR to foreign investors. Whoever will eventually be proven correct is anyone's guess, but this does not detract from the fact that the issuance of the writ of preliminary injunction in the consolidated CA petitions was discretionary, interlocutory and preservative in nature, and equally importantly, it was a collective and deliberated action of the former Special 14th Division upon an urgent application for writ of preliminary injunction.

The complainants have no personality to assail the injunctive writ.

Section 1 of Rule 19 of the Rules of Court provides that a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. Conversely, a person who is not a party in the main suit cannot be bound by an ancillary writ, such as a preliminary injunction. Indeed, he cannot be affected by any proceeding to which he is a stranger.[34]

Moreover, a person not an aggrieved party in the original proceedings that gave rise to the petition for *certiorari,* will not be permitted to bring the said action to annul or stay the injurious writ.[35] Such is the clear import of Sections 1 and 2 of Rule 65 of the Rules of Court. Thus, a person not a party to the proceedings in the trial court or in the CA cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed.[36] Stated differently, if a petition for *certiorari* or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order.[37]

The complainants, who at various times served as elected members of the Board of NADECOR, did not bother to intervene in the CA petitions, hence, they are not entitled to the service of pleadings and motions therein. Complainant Fernandez was himself a defendant in SEC Case No. 11-164 in the RTC, but he chose not to join any of the four CA petitions.

In this Court's Resolution[38] dated July 18, 2012 in **G.R. No. 202218-21**, entitled "*Jose G. Ricafort, et al. v. Court of Appeals [Special 14th Division], et al.,*" involving a petition for *certiorari* and prohibition filed by JG Ricafort, De Jesus, Paolo A. Villar, and Ma. Nalen Rosero-Galang, also questioning the validity of the writ of preliminary injunction issued by the Special 14th Division of the CA, we ruled that persons who are not parties to any of the consolidated petitions have no personality to assail the said injunctive writ.

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34 Supra note 24.

35 *Pascual v. Robles*, G. R. No. 182645, June 22, 2011, 652 SCRA 573, 580-581.

36 Id. at 581, citing *Government Service Insurance System v. Court of Appeals (Eighth Division)*, G.R. Nos. 183905 and 184275, April 16, 2009, 585 SCRA 679, 697.

37 Id., citing *Macias v. Lim*, G.R. No. 139284, June 4, 2004, 431 SCRA 20, 36.

38 *Rollo*, pp. 108-111.

In another Resolution,[39] also promulgated on July 18, 2012, in **G.R. No. 202257-60**, a petition for *certiorari* and prohibition filed by herein complainants to assail the validity of the writ of preliminary injunction in the aforesaid consolidated CA petitions, we likewise dismissed the petition due to lack of personality of the petitioners, since they were non-parties and strangers to the consolidated CA petitions. We pointed out that they should first have intervened below, and then filed a motion for reconsideration from the questioned CA order. On September 19, 2012, we denied their motion for reconsideration from the dismissal of their petition.

Having established that the herein complainants have no personality to assail the writ of preliminary injunction issued by the CA's former Special 14th Division, we cannot now permit them to harass the CA Justices who issued the same. For even granting that the issuance of the writ was erroneous, as a matter of public policy a magistrate cannot be held administratively liable for every discretionary but erroneous order he issues.[40] The settled rule is that "a Judge cannot be held to account civilly, criminally or administratively for an erroneous decision rendered by him in good faith."[41] The case of *Cortes v. Sandiganbayan*[42] is instructive. We quote:

> It must be stressed that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. He cannot be subjected to liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous, as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.
>
> It is also worth mentioning that the provisions of Article 204 of the Revised Penal Code as to "rendering knowingly unjust judgment" refer to an individual judge who does so "in any case submitted to him for decision" and has no application to the members of a collegiate court such as the Sandiganbayan or its divisions, who reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. It also follows, consequently, that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such a collective decision is "unjust" cannot prosper.

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39 Id. at 300-303.

40 *Pabalan v. Judge Guevarra*, 165 Phil. 677, 683 (1976).

41 *In Re: Petition for the dismissal from service and/or disbarment of Judge Dizon,* 255 Phil. 623, 627 (1989).

42 467 Phil. 155 (2004)

> The remedy of the aggrieved party is not to file an administrative complaint against the judge, but to elevate the assailed decision or order to the higher court for review and correction. An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for certiorari, unless the assailed order or decision is tainted with fraud, malice, or dishonesty. x x x.[43] (Citations omitted)

It was also emphasized in the above case that as an established rule, an administrative, civil or criminal action against a judge cannot be a substitute for an appeal.[44]

WHEREFORE, premises considered, A.M. OCA IPI No. 12-201-CA-J is hereby **DISMISSED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

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43 Id. at 162-163.

44 Id. at 163, citing *In Re Joaquin T. Borromeo*, 311 Phil. 441, 512-513.

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice