Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ANASTACIO R. MARTIREZ, Petitioner,	**G.R. No. 225918**
	Present:
-versus-	LEONEN, *Chairperson*, HERNANDO, INTING, ROSARIO*, and LOPEZ, J.Y., *JJ.*
MARIO B. CRESPO a.k.a. MARK JIMENEZ, TAXINET/PINOY TELEKOMS, INC. AND LATITUDE BROADBAND, INC., Respondents.	**Promulgated:** June 30, 2021 MisRDCBath

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DECISION

LEONEN, *J.*:

A judge should have voluntarily inhibited from a case where his actions, taken together, show badges of bias in favor of one of the parties to the case.

This Petition for Review on Certiorari[1] assails the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the December 13, 2013

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* Designated additional Member per Special Order No. 2833.

1 *Rollo*, pp. 24–147. Under Rule 45 of the Rules of Court.

2 Id. at 149–157. The March 29, 2016 Decision in CA-G.R. SP No. 134850 was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Andres B. Reyes, Jr. and Romeo F. Barza of the First Division of the Court of Appeals, Manila.

3 Id. at 159–161. The July 20, 2016 Resolution in CA-G.R. SP No. 134850 was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Andres B. Reyes, Jr. and Romeo F. Barza of the First Division of the Court of Appeals, Manila.

and January 29, 2014 Orders[4] of the Regional Trial Court of Pasig City, Branch 70 in Civil Case No. 73228.

On October 28, 2011, Anastacio R. Martirez (Anastacio) and Marilu San Juan Martirez (Marilu) filed before the Regional Trial Court of Pasig City a Complaint for "Recovery of Sum of Money and/or Declaration of Ownership and Recovery of Real Property and Damages with Prayer for the Issuance of a Writ of Preliminary Attachment"[5] against Mario B. Crespo a.k.a. Mark Jimenez (Crespo), Taxinet, Inc., renamed as Pinoy Telekoms, Inc. (Pinoy), and Latitude Broadband, Inc. (Latitude). The Complaint was later raffled to Branch 70 and docketed as Civil Case No. 73228.

In their Complaint, Anastacio and Marilu narrated that sometime in January 2011, Crespo proposed to make Anastacio the Chairman and Chief Executive Officer of Pinoy. Crespo then promised to give Anastacio 7% equity in Pinoy worth ₱49 million for free, although they will make it appear that Anastacio paid for the shares. Afterwards, Crespo persuaded Anastacio to secure a ₱49-million loan for Pinoy and offered a condominium unit in Essensa East Forbes Condominium, Taguig City as collateral.[6]

On May 11, 2011, Crespo allegedly handed Anastacio the following: (1) a Deed of Assignment, with Crespo as Assignor and Anastacio as Assignee; (2) another Deed of Assignment, with Crespo as Assignee and Anastacio as Assignor; and (3) a Declaration of Trust which provides that Anastacio holds title to the Taguig condominium unit in trust for Crespo. Crespo then transferred the shares he promised to Anastacio. "[T]o make it appear that [Anastacio] purchased his shares in Pinoy," Anastacio and Marilu made remittances to Crespo from May 20, 2011 to August 2, 2011 for which Crespo issued Acknowledgment Receipts. However, after the last payment, Anastacio received an e-mail from Crespo's counsel informing him that the transfer of the shares will be deferred "due to the non-compete provisions in his employment contract with Qatar Telecoms."[7]

After their written demands were ignored, Anastacio and Marilu filed a Complaint against Crespo, Pinoy, and Latitude, as the registered owner of the condominium unit. They prayed for the return of their money, or in the alternative, the recission of the Deed of Assignment and Declaration of Trust, for them to be declared the absolute owner of the condominium unit, and for its possession and certificate of title to be surrendered to them.[8]

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4 Id. at 899–900 and 920. The Orders were penned by Presiding Judge Louis P. Acosta.
5 Id. at 162–213.
6 Id. at 150.
7 Id.
8 Id. at 150–151.

In a November 22, 2011 Order,[9] the Regional Trial Court of Pasig City, Branch 70, through Judge Louis P. Acosta (Judge Acosta), granted Anastacio and Marilu's prayer for the issuance of a writ of preliminary attachment, after the *ex parte* hearing and formal offer of documentary evidence on November 21, 2011. On November 28, 2011, Judge Acosta issued a Writ of Preliminary Attachment[10] directing the sheriff to attach all real and personal properties of Crespo, Pinoy, and Latitude.

In their December 23, 2011 Answer with Special and Affirmative Defenses,[11] Crespo, Pinoy, and Latitude alleged that Crespo built Pinoy which was granted a telecommunications franchise in July 1996.[12] Crespo then engaged the services of Anastacio as Chairman and Chief Executive Officer as the latter already resigned from his employment.[13] They also alleged that the assignment of the condominium unit is consideration for Anastacio to secure a loan from Citibank, which he failed to obtain. Further, they claimed that the amounts remitted by Anastacio were payment for the Pinoy shares valued at ₱49 million, as evidenced by the Acknowledgment Receipts.[14] The dividends from these shares would supposedly help recoup the investments made by Anastacio.[15] As special and affirmative defenses, they also argued that the complaint failed to state a cause of action because there is no evidence of the alleged loan,[16] and the Deeds of Assignment were unenforceable and superseded by the parties' intention to enter into a contract of sale of Pinoy shares.[17]

Anastacio and Marilu filed a Reply and Answer to the Compulsory Counterclaims[18] made by Crespo, Pinoy, and Latitude.

On January 26, 2012, Crespo, Pinoy, and Latitude filed a Motion to Lift Writ of Preliminary Attachment and to Lift *Lis Pendens*.[19] In response, Anastacio and Marilu filed their Opposition[20] dated February 10, 2012.

In a July 5, 2012 Order,[21] the trial court granted the Motion to lift the writ of preliminary attachment and directed the Register of Deeds to cancel the notice of *lis pendens*. Thus, Anastacio and Marilu filed a Motion for

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9 Id. at 311–312.
10 Id. at 313–315.
11 Id. at 319–363.
12 Id. at 319.
13 Id. at 321.
14 Id. at 327.
15 Id. at 329.
16 Id. at 336–337.
17 Id. at 343.
18 Id. at 394–477.
19 Id. at 481–509.
20 Id. at 543–565.
21 Id. at 629–632.

Reconsideration[22] on July 23, 2012 which Crespo, Pinoy, and Latitude opposed[23] on September 3, 2012.

On September 12, 2012, Anastacio and Marilu filed an Urgent Omnibus Motion to (1) set for hearing defendants' posting of counter-bond; and (2) hold in abeyance the approval of defendants' counter-bond pending hearing and examination of PMT Insurance Consultancy.[24] In an Order[25] dated September 27, 2012, the trial court set for hearing Crespo, Pinoy, and Latitude's posting of counterbond on November 7, 2012.

However, on said date Anastacio and Marilu were notified that since "the presiding judge [was] not feeling well," the hearing was reset to February 6, 2013.[26] They also received an Order[27] granting the Motion to Admit Opposition to their Urgent Omnibus Motion.

On February 6, 2013, the parties were notified that the "presiding judge is presently on forfeitable leave" and the "hearing on defendant[s]' posting of a counter-bond through PMT Insurance Consultancy" is reset to March 15, 2013.[28]

During the hearing on March 15, 2013, Anastacio and Marilu submitted a certification issued by the Supreme Court that PMT Insurance Consultancy was not accredited to deal with bonds, and that the lifting of the Writ of the Preliminary Attachment will facilitate the disposition of the property, leaving them with no sufficient security in the event of a favorable judgment.[29] They likewise informed Judge Acosta that a certain Lutz Kunack claimed he already bought the condominium unit subject of the preliminary attachment.[30]

In another Order[31] dated May 22, 2013, the trial court revoked its previous Order dated July 5, 2012 which lifted the writ of preliminary attachment and notice of *lis pendens*, for failure of Crespo, Pinoy, and Latitude to post the required counterbond.

On July 17, 2013, Anastacio and Marilu filed a Motion to Resolve with Motion to Set Case for Pre-trial,[32] while Crespo, Pinoy, and Latitude

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22 Id. at 633–649.
23 Id. at 650–657.
24 Id. at 659–667.
25 Id. at 683–684.
26 Id. at 105.
27 Id. at 685.
28 Id. at 106.
29 Id. at 113–114.
30 Id. at 114.
31 Id. at 720–721.
32 Id. at 722–727.

filed a Motion to Resolve Defendant's Motion for Preliminary Hearing on Affirmative Defenses.[33]

In an October 11, 2013 Order,[34] the Regional Trial Court of Pasig City, Branch 70, dismissed the Complaint filed by Anastacio and Marilu for failure to state a cause of action. The dispositive portion of the Order reads:

> **WHEREFORE**, in view of the foregoing, we **GRANT** the Motion to Dismiss of the defendants. The Complaint is hereby **DISMISSED** for failure to state a cause of action.
>
> As an indubitable consequence, the Court **ORDERS** the lifting of the Writ of attachment and **DIRECTS** the Register of Deeds of Taguig City to cancel the Notice of Lis Pendens and the Sheriff to lift the Notice of Garnishment to all personal properties including bank accounts of the defendants.
>
> **SO ORDERED**. [35]

On October 25, 2013, Anastacio and Marilu filed a Motion for Reconsideration.[36]

Subsequently, Anastacio and Marilu filed a Motion for Inhibition[37] on November 26, 2013 and a Request for Investigation and/or Administrative Complaint[38] against Judge Acosta addressed to then Chief Justice of the Supreme Court, claiming that Judge Acosta's actions manifested extreme bias in favor of Crespo, Pinoy, and Latitude, causing unjust treatment.

In a December 13, 2012 Order,[39] the trial court denied the Motion for Inhibition for lack of merit:

> The instant 'Motion to Inhibit' arose from the 'Order' of this Court dated 11 October 2013 dismissing the complaint on the ground that the complaint states no cause of action.
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> The 'Order' dated 11 October 2013 speaks for itself. A thorough review would show that it is based only on the facts and law applicable.
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> The allegations that the actions of the judge showed 'extreme bias in favor of the defendants to the prejudice of the plaintiffs' are simply baseless and not substantiated by any evidence. The records would show that even the defendants were recipients of orders issued by the court adverse to their own interests. The judge firmly believes that he has not

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33 Id. at 728–730.
34 Id. at 736–742.
35 Id. at 742.
36 Id. at 743–771-A.
37 Id. at 827–832.
38 Id. at 833–888.
39 Id. at 899–900.

> done any act which justifies a fair suspicion of partiality or which casts doubt on his honest actuations and probity in favor of either party. To say the very least, the allegations against the judge are mere conjectures which cannot constitute just or valid reasons for him to disqualify himself from the case. Under the premises, the judge cannot conveniently inhibit himself and take the seemingly easy way out. It is a matter of official duty for him to proceed with the trial of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction.
>
> **WHEREFORE**, the Motion to Inhibit is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[40] (Emphasis in the original)

Thus, Anastacio and Marilu filed another Motion for Reconsideration[41] which was denied in an Order[42] dated December 16, 2013.

Anastacio and Marilu received a copy of the Orders denying their Motions for Inhibition and Reconsideration.[43] Thus, they filed a Notice of Appeal[44] as well as a Motion for Reconsideration[45] of the December 13, 2012 Order denying their Motion to Inhibit.

In an Order[46] dated January 29, 2014, the trial court denied the Motion for Reconsideration.

> Considering that the Notice of Appeal filed on 13 January 2014 by the plaintiff has been duly acted upon favorably by the Court in is Order dated 14 January 2014, the Court cannot act upon the said Motion for Reconsideration as the same had been rendered moot and academic.
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> **WHEREFORE**, for having been rendered moot and academic by the appeal, the Motion is denied.
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> SO ORDERED.[47] (Emphasis in the original)

Meanwhile, Anastacio and Marilu received a copy of the trial court's Order dated January 14, 2014 giving due course to their Notice of Appeal.[48]

Aggrieved with the denial of their Motion to Inhibit, Anastacio and Marilu filed a Petition for Certiorari assailing the December 13, 2013 and January 29, 2014 Orders of Judge Acosta before the Court of Appeals.[49]

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40 Id.
41 Id. at 906–919.
42 Id. at 895–898.
43 Id. at 66.
44 Id. at 901–903.
45 Id. at 906–919.
46 Id. at 920.
47 Id.
48 Id. at 68.

In its March 29, 2016 Decision, the Court of Appeals dismissed the Petition after finding that an appeal is the appropriate remedy to question the orders of the trial court, and the appeal rendered the Petition for Certiorari superfluous.[50] Even disregarding the procedural lapses, the Court of Appeals found that Judge Acosta did not gravely abuse his discretion in proceeding with and deciding the main case, because: (a) Anastacio and Marilu failed to prove his alleged bias in favor of Crespo, Pinoy, and Latitude with extrinsic evidence; (b) the pendency of the Motion for Reconsideration of the Order denying the Motion to Inhibit did not stay the proceedings in the main case, according to Rule 137, Section 2 of the Rules of Court; and (c) the filing of an administrative case against a judge is not a ground for disqualification or voluntary inhibition.[51] The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for certiorari is hereby **DISMISSED**.
>
> **SO ORDERED.**[52] (Emphasis in the original)

In its July 20, 2016 Resolution,[53] the Court of Appeals denied the motion for reconsideration filed by Anastacio and Marilu.

Hence, on September 2, 2016, petitioner filed before this Court a Petition for Review on Certiorari under Rule 45.[54]

Respondent Crespo filed his Comment dated February 2, 2017.[55] Subsequently, petitioner filed his Reply dated March 21, 2017.[56]

As the Resolution directing respondents Pinoy and Latitude to file their comments remained unserved, this Court, in an August 19, 2019 Resolution,[57] required petitioner to provide the correct and present address of the other respondents to which he complied with on December 6, 2019.[58]

Petitioner alleges that the special civil action of certiorari, and not an appeal, is the proper remedy to assail the denial of a judge's inhibition,

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49 Id. at 149.
50 Id. at 153.
51 Id. at 154–156.
52 Id. at 157.
53 Id. at 158.
54 Id. at 24–147.
55 Id. at 1159–1169.
56 Id. at 1181–1187.
57 Id. at 1306.
58 Id. at 1312–1319.

which is interlocutory in nature.[59] Petitioner claims that all the requisites for filing a petition for certiorari were satisfied.[60]

Petitioner claims he was deprived of due process when Judge Acosta denied the Motion to Inhibit without any hearing and subsequently ruled upon the Motion for Reconsideration on the merits of the case on December 16, 2013.[61] Petitioner also argues that the Court of Appeals erred in upholding the propriety of Judge Acosta's ruling in the main case despite the pendency of the inhibition.[62]

Petitioner insists that he and his wife adduced sufficient proof showing Judge Acosta's partiality, and the Court of Appeals erred in not finding that the judge should inhibit.[63] Petitioner claims that the following facts support their allegation of Judge Acosta's bias : (1) he dismissed their Complaint even without a hearing and without the filing of a motion to dismiss by respondents, who only filed an Answer; (2) it took almost a year for their Motion for Reconsideration, from the Order dated July 5, 2012 lifting the Writ of Preliminary Attachment and Notice of *Lis Pendens*, to be resolved;[64] (3) he did not rule upon the Motion for Preliminary Hearing on Affirmative Defenses filed by respondents despite it being deemed submitted for resolution;[65] (4) the Motion to Resolve with Motion to Set Case for Pre-trial was not acted upon by him;[66] and (5) he issued the October 11, 2013 after one year, six months, and one day had lapsed from the time the last pleading was filed.[67]

Petitioner claims that the issue on inhibition was a justiciable controversy at the time it was raised because the motion for reconsideration on the main case was still pending.[68] Assuming the Motion to Inhibit was mooted by the favorable action on his notice of appeal, petitioner argues that this case falls under the exception of the moot and academic principle, as it involves violation of due process and is capable of repetition yet evading review.[69]

On the other hand, respondent alleges that the Court of Appeals did not err in upholding the validity of Judge Acosta's non-inhibition as there is no compulsory ground for the judge to inhibit and petitioner failed to prove his bias and partiality.[70] Moreover, respondent Crespo claims that the issue

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59 Id. at 81–82.
60 Id. at 81.
61 Id. at 85.
62 Id. at 89.
63 Id. at 90–91.
64 Id. at 97.
65 Id. at 102.
66 Id. at 116.
67 Id. at 117.
68 Id. at 136.
69 Id. at 139–140.
70 Id. at 1162.

on inhibition has been rendered moot, or ceased to present a justiciable controversy, when the Court of Appeals granted petitioner's appeal and ordered the trial court to reinstate the complaint.[71] Respondent Crespo further alleges that: (1) certiorari cannot be availed of because petitioner chose the remedy of appeal; (2) the determination of the issue on inhibition would be of no practical use; and (3) the present case does not fall in any of the exceptions for when a moot case may still be reviewed by this Court.[72] Finally, respondent Crespo argues that petitioner violated procedural rules for alleging factual questions in a Rule 45 case.[73]

In rebuttal, petitioner claims that he raises questions of law, not of fact as respondent Crespo claims. Petitioner further admits that while there is no ground for compulsory inhibition, Judge Acosta should have voluntarily inhibited from the case considering that his conduct showed extreme bias for respondents and is tainted with the appearance of impropriety.[74] Petitioner then reiterates the actions of Judge Acosta allegedly showing partiality in favor of respondents.[75] Finally, he insists that this case still presents a justiciable controversy as the remand of the main case to the trial court is "not in any way a ruling on the 'integrity and competency' of the trial court judge[.]"[76] Even assuming that the inhibition is rendered moot, petitioner reiterates that this case falls within the exceptions to the application of the moot and academic principle.[77]

The main issue for this Court's resolution is whether or not the Court of Appeals erred in not finding that Judge Louis P. Acosta committed grave abuse of discretion when he did not voluntarily inhibit from the main case.

The Petition is partly meritorious.

I

Rule 65, Section 1 of the Rules of Court provides for the requisites in filing a petition for certiorari:

> **SECTION 1.** ***Petition for certiorari.***— When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or

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71 Id. at 1163.
72 Id. at 1165.
73 Id.
74 Id. at 1197.
75 Id. at 1220.
76 Id. at 1224.
77 Id. at 1226.

> modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

In *Ong v. Spouses Basco*,[78] this Court held that when appeal affords the petitioner adequate and expeditious relief, a special action for certiorari is an improper remedy, thus:

> [A]fter a judgment had been rendered by the RTC and an appeal therefrom had been perfected, petitioner's resort to a special civil action for certiorari is no longer proper because there exists plain, speedy and adequate remedy, i.e., an ordinary appeal. Section 2, Rule 137 of the Rules of Court is controlling:
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> > SEC. 2. Objection that judge disqualified, how made and effect. — If it be claimed that an official is disqualified from sitting as (provided in Section 1 hereof), the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw, therefrom in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but ***no appeal or stay shall be allowed from, or by means of, his decision in favor of his own competency, until after final judgment in the case.***
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> Here the appeal affords petitioner adequate and expeditious relief because the issue of whether the trial judge acted correctly or erroneously on her competency to take cognizance of a case could be raised on appeal from the main decision.
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> [W]hile the restriction in the Rule against appeal or stay of the proceedings where the trial judge rules in favor of her competency to sit in a case is not an absolute rule in civil cases, and has not precluded a resort *in appropriate cases* to the special civil action of *certiorari* before the higher courts for determination, this will apply only in cases where the denial of the motion for inhibition or disqualification was made ahead of the trial court's judgment on the merits and there is a clear showing that the case is an exceptional one. . . .
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> In this case, a judgment on the merits has already been rendered by Judge Reyes before she issued the Order dated September 13, 2004, deciding in favor of her competency and denying petitioner's motion for reconsideration of the April 23, 2004 RTC Decision. Judge Reyes acted judiciously when she decided to sit in Civil Case No. 98-92072 and proceeded to render the decision in the case, and later resolved petitioner's

[78] 583 Phil. 248 (2008) [Per J. Quisumbing, Second Division].

> motion for reconsideration. It was her official duty to do so.[79] (Emphasis in the original, citations omitted)

Similarly, since a judgment on the main case was already rendered by Judge Acosta on October 11, 2013, before he denied the Motion to Inhibit and Motion for Reconsideration filed by petitioner, petitioner's resort to a special civil action for certiorari was no longer proper. In that case, the issue of whether Judge Acosta acted erroneously on his competency to take cognizance of the case should have been raised instead in the appeal from the main decision.

Nevertheless, we proceed to determine whether there are grounds for Judge Acosta to inhibit.

II

Due process of law requires that hearings be held before an impartial and disinterested tribunal, and that a decision must come from an impartial and unbiased judge.[80] Thus, Rule 137, Section 1 of the Rules of Court enumerates the instances when a judge shall and may inhibit from hearing a case:

> SECTION 1. *Disqualification of judges.* — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
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> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The rules contemplate two kinds of inhibition: compulsory and voluntary.[81] The first paragraph enumerates specific grounds for compulsory inhibition, or when it is conclusively presumed that a judge's partiality might be questioned due to their relationship or interest.[82] On the other hand, the second paragraph refers to voluntary inhibition, or when judges are given discretion to determine whether they should sit in a case for "other just and valid reasons with only [their] conscience to guide [them]."[83]

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79 Id. at 253–254.

80 *Webb v. People*, 342 Phil. 206 (1997) [Per J. Puno, Second Division].

81 *People v. Kho*, 409 Phil. 326 (2001) [Per J. Kapunan, First Division].

82 *Fil-Estate Properties, Inc. v. Reyes*, G.R. No. 152797, September 18, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65753> [Per J. Leonen, Third Division].

83 *People v. Kho*, 409 Phil. 326, 335 (2001) [Per J. Kapunan, First Division].

Hence, this Court recognizes that there might be other causes outside of pecuniary interest, relationship, or previous participation in the matter in adjudication, which could conceivably erode the trait of objectivity.[84]

In *Umale v. Villaluz*,[85] this Court commended a judge for voluntarily inhibiting in a case on which he had personal knowledge. There, the roots of voluntary inhibition were traced as follows:

> Before the rule was amended in 1964, a judge could not voluntarily inhibit himself on grounds of extreme delicacy, or prejudice or bias or hostility, not even when he would be violating Sections 3, 26 and 30 of the Canons of Judicial Ethics because he is a paid professor of law in the college owned by one of the litigants. Neither was a judge disqualified from trying a prosecution for perjury of an accused, who was ordered investigated and prosecuted as a perjured witness by said judge; not even if the judge himself took great interest and an active part in the filing of the criminal charge to the extent of appointing the fiscal when the regular provincial fiscal refused to file the proper information.
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> But in 1961, We enunciated that a judge can inhibit himself from trying a case on the ground that the opinion he expressed in a letter addressed by him as counsel might in some way or another influence his decision in the case at bar and expressed his fear of not being able to render a truly impartial judgment.
>
> In 1962, We also ruled in the case of Del Castillo vs. Javelona that a judge may voluntarily inhibit himself by reason of his being related to a counsel within the fourth civil degree (now expressly included as a ground in par. 1 of Rule 137); because Rule 126 (the old rule) "does not include nor preclude cases and circumstances for voluntary inhibition which depends upon the discretion of the officers concerned."
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> And in 1967, We affirmed that a judge may voluntarily disqualify himself on grounds other than those mentioned in paragraph 1 of Section 1 of Rule 137, as amended, such as bias or prejudice engendered by the judge having "lost respect in the manner the prosecutor was handling the case . . ."; or when the lawyer for a litigant is his former associate.[86] (Citations omitted)

In *Pimentel v. Salanga*,[87] this Court crafted a guide by which a judge may exercise their discretion:

> A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not

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84 *Umale v. Villaluz*, 151-A Phil. 563 (1973) [Per J. Makasiar, First Division].
85 Id.
86 Id. at 568–569.
87 128 Phil. 176 (1967) [Per J. Sanchez, En Banc].

> impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substances to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.[88]

In *Gutang v. Court of Appeals*,[89] we held that each case of inhibition shall be treated based on its own circumstances:

> In the final reckoning, there is really no hard and fast rule when it comes to the inhibition of judges. Each case should be treated differently and decided based on its peculiar circumstances. The issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge. It is a subjective test the result of which the reviewing tribunal will not disturb in the absence of any manifest finding of arbitrariness and whimsicality. The discretion given to trial judges is an acknowledgment of the fact that these judges are in a better position to determine the issue of inhibition as they are the ones who directly deal with the parties-litigants in their courtrooms.[90]

In *Castillo v. Juan*,[91] respondent judge was ordered to desist from further conducting trial in a case after he conferred with the offended parties to inform them that their cases were weak and a settlement would be to their advantage. There, this Court held that the parties could no longer be expected to have faith in the judge's impartiality, since his conduct amounting to prejudgment was not consonant with the exacting standard of the cold neutrality of an impartial judge.

Lastly, in *Latorre v. Ansaldo*,[92] this Court held that respondent judge should have inhibited himself instead of proceeding with the case after his actions casted a cloud over his impartiality:

> When Judge Ansaldo found that the motion of the complainant to discipline the jail guards was not supported by affidavits or testimonies of

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88 Id. at 183–184.
89 354 Phil. 77 (1998) [Per J. Martinez, Second Division].
90 Id.
91 159 Phil. 143 (1975) [Per J. Fernando, Second Division].
92 410 Phil. 570 (2001) [Per J. Pardo, First Division].

> witnesses on the matter, he should have set the case for hearing, requiring the jail guards to explain their side.
>
> Respondent judge's act of scheduling the petition for bail for hearing on November 18, 1998, less than three (3) days from the issuance of the order constitutes plain ignorance of the law. Such order created a cloud of impropriety on the part of the judge.
>
> Nevertheless, we have to consider the respondent judge's act of resetting the hearing to November 25, 1998. Obviously, he realized that he committed an error and tried to rectify it. The doubt as to the impartiality of the judge, however, was attendant in the mind of the parties.
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> To highlight the doubt, the judge did not fix any bail for the temporary liberty of the accused.[93]

Here, petitioner seeks Judge Acosta's voluntary inhibition from the main case on the ground of bias or partiality, as manifested in the following actions: (1) Judge Acosta dismissed the Complaint even without a hearing and without the filing of a motion to dismiss by respondents, who only filed an Answer; (2) petitioner's Motion for Reconsideration from the Order lifting the Writ of Preliminary Attachment and Notice of Lis Pendens was pending for almost a year before it got resolved; (3) Judge Acosta did not act upon the Motion for Preliminary Hearing on Affirmative Defenses filed by respondents despite it being deemed submitted for resolution; (4) the Motion to Resolve with Motion to Set Case for Pre-trial was also not acted upon by Judge Acosta; and (5) Judge Acosta issued the October 11, 2013 Order dismissing the Complaint after more than a year from the time the last pleading was filed.

These circumstances taken together, we find that Judge Acosta's actions showed badges of bias against petitioner.

The records show that respondents filed an Answer with Special and Affirmative Defenses and subsequently moved for a Preliminary Hearing on Affirmative Defenses, but nowhere does it appear that Judge Acosta acted on the motion and conducted a hearing on this matter. Still, Judge Acosta dismissed the Complaint filed by petitioner based on the affirmative defense raised by respondents.

Moreover, it took Judge Acosta almost a year, or only on May 22, 2013, to resolve petitioner's Motion for Reconsideration of the July 5, 2012 Order which lifted the writ of preliminary attachment, despite being informed of respondents' failure to post a valid counterbond. The records reveal that Judge Acosta repeatedly reset the hearing for respondents' posting of a counterbond to November 7, 2012, then to February 6, 2013,

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[93] Id. at 576–577.

and then to March 15, 2013. During the March 15, 2013 hearing, petitioner submitted a certification issued by the Supreme Court stating that the bonding company from which respondents obtained their counterbond was not accredited to deal with bonds. He also informed Judge Acosta that a certain Lutz Kunack already bought the condominium unit subject of the preliminary attachment. Yet, it was only on May 22, 2013, or almost a year after the July 5, 2012 Order, that another Order revoking the lifting of the writ of preliminary attachment and notice of *lis pendens* was issued for failure of respondents to post the required counterbond, to the prejudice of petitioner.

This is in contrast with Judge Acosta's action when respondents filed a Motion to Lift Writ of Preliminary Attachment and to Lift *Lis Pendens* on January 26, 2012. There, Judge Acosta, in a July 5, 2012 Order, granted their Motion and cancelled the Notice of *Lis Pendens* only within a period of six months.

Also, the Motion to Resolve with Motion to Set Case for Pre-trial filed by petitioner on July 17, 2013 was not acted upon while respondents' Motion to Resolve Defendant's Motion for Preliminary Hearing on Affirmative Defenses was deemed submitted for resolution by Judge Acosta.

To create further doubt on his partiality, it took Judge Acosta an inordinate amount of time to resolve the Complaint, finally ruling in favor of respondents in an October 11, 2013 Order although the last pleading was submitted for resolution on May 14, 2012.

The Constitution mandates that "[a]ll cases or matters filed after the effectivity of this Constitution must be decided or resolved within. . . three months [from the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself] for all other lower courts."[94]

Given that his actions under the circumstances, taken as a whole, casted doubt on his partiality, Judge Acosta should have exercised his discretion in a way that people's faith in the judiciary would not be impaired—that is to disqualify himself.

> A judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt on [their] honest actuation and probity in favor of either party, or incite such state of mind, [they] should conduct a careful self-examination. [They] should exercise [their] discretion in a way that the people's faith in the courts of justice is not impaired. The better course for the judge is to disqualify himself [or herself.][95]

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94 CONST., art. VIII, sec. 15(1) and (2).

95 *Latorre v. Ansaldo,* 410 Phil. 570, 578 (2001) [Per J. Pardo, First Division] citing *Orola v. Alovera,* 390 Phil. 950 (2000) [Per J. Pardo, First Division].

However, considering Judge Acosta's appointment as Associate Justice in the Court of Appeals, the issue of his inhibition in the pre-trial and trial of the main case before the trial court has been rendered moot.

WHEREFORE, the Petition for Review is **DENIED** for being moot and academic.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice