Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **April 20, 2015** *which reads as follows:*

"**G.R. No. 198075** (Koppel Inc. [formerly known as KPL Aircon Inc.], *petitioner, v.* Makati Rotary Club Foundation, Inc., *respondent.*)

In our Decision[1] dated 4 September 2013, we required petitioner Koppel, Inc. and respondent Makati Rotary Club Foundation, Inc. to have their present dispute[2] settled *via* arbitration pursuant to "*the arbitration clause of [their] 2005 Lease Contract.*" Our exact directive on this point appears in the *fallo* of our decision as such:

> **WHEREFORE**, premises considered, the petition is hereby **GRANTED**. Accordingly, We hereby render a Decision:
>
> x x x x
>
> 4. **REFERRING** the petitioner and the respondent to arbitration pursuant to the arbitration clause of the *2005 Lease Contract*, repeatedly included in the 2000 Lease Contract and in the 1976 Amended *Deed of Donation.*[3]
>
> x x x x

Meaning to comply with the foregoing directive, respondent, for its part, served petitioner with a *demand*[4] to arbitrate before the Philippine Dispute Resolution Center, Inc. (PDRCI) on 11 February 2014.

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1 *Rollo*, Vol. I, pp. 1337-1359.

2 Refers to the disagreement between the petitioner and respondent as to the rental stipulations of their *2005 Lease Contract*. See *rollo*, Vol. I, p. 114.

3 *Rollo*, Vol. I, pp. 1357-1358.

4 Id. at 1430-1444. What was actually served by respondent is a *Notice of Arbitration and Statement of Claims* that it filed before the PDRCI on 28 January 2014.

Petitioner, however, rejected respondent's demand. In its 21 February 2014 *letter*[5] to respondent, petitioner related that it refuses the offer to arbitrate before the PDRCI because the PDRCI was "*never designated* [in the arbitration clause of the *2005 Lease Contract*] *as the arbitration body to settle any dispute between* [the parties]."

Spurned by the rejection of its demand, respondent filed before us the instant *motion*[6] charging petitioner with *indirect contempt*. Respondent argues that, in rejecting the offer to arbitrate before the PDRCI, petitioner effectively defied the directive in our decision that required both parties to go through arbitration. Respondent thus prays that we cite petitioner for contempt pursuant to Section 3(b) of Rule 71 of the Rules of Court.

OUR RULING

The instant motion is a procedural anomaly that is also substantially deficient. It must, therefore, be denied.

The Instant Motion is a Procedural Anomaly

Respondent, to begin with, committed a procedural blunder when it filed a mere motion to herein charge petitioner with indirect contempt. Our rules of procedure only recognize two (2) ways by which a proceeding for indirect contempt may be initiated and the filing of a motion is not one of them.

Section 4 of Rule 71 of the Rules of Court sanctions two (2) modes for initiating indirect contempt proceedings *i.e.*, (1) by the court, *motu proprio*, through issuing an *order* or a *formal charge* and (2) by an affected party through the filing of a *verified petition*:

RULE 71

> Section 4. *How proceedings commenced.* — **Proceedings for indirect contempt may be initiated *motu proprio* by the court** against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

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5 Id. at 1424-1425.

6 Entitled "*Manifestation with Motion To Cite Petitioner in Contempt.*" Id. at 1396-1402.

> **In all other cases, charges for indirect contempt shall be commenced by a verified petition** with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (Emphasis supplied)

The two (2) modes for initiating indirect contempt proceedings prescribed in the above section are exclusive *i.e.*, there is no other way by which a charge for indirect contempt may be commenced in our courts unless through either of the prescribed modes.[7] Hence, per the above section, a charge of indirect contempt cannot be initiated by the mere filing of a motion.[8]

In his treatise on remedial law, Justice Florenz D. Regalado—an esteemed former member of the Court and the vice-chairman of the Revision of the Rules of Court Committee that drafted our present rules on civil procedure—explained the reason why the Rules of Court deliberately left out the use of motions as a means of initiating proceedings for indirect contempt:

> 1. This new provision [Section 4 of Rule 71] clarifies with a regulatory norm the proper procedure for commencing contempt proceedings. **While such proceeding has been classified as a special civil action under the former Rules, the heterogeneous practice, tolerated by the courts, has been for any party to file a mere motion without paying any docket or lawful fees therefor and without complying with the requirements for initiatory pleadings, which is now required in the second paragraph of this amended section. Worse, and as a consequence of unregulated motions for contempt, said incidents sometimes remain pending for resolution although the main case has already been decided. There are other undesirable aspects but, at any rate, the same may now be eliminated by this amendatory procedure.** (Emphasis supplied)
>
> **Henceforth, except for indirect contempt proceedings initiated *motu proprio* by order of or a formal charge by the offended court, all charges shall be commenced by a verified petition with full compliance with the requirements therefor and shall be disposed of in accordance with the second paragraph of this section.**[9]

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7 See *Land Bank of the Phil. v. Listana*, 455 Phil. 750, 759 (2003).
8 See *Mallari v. GSIS*, 624 Phil. 700, 719 (2010).
9 I Regalado, Remedial Law Compendium 808 (7th revised ed. 1999). Also cited in *Mallari v. GSIS*, supra note 8 at 720.

Verily, the present charge of indirect contempt against petitioner cannot prosper for it proceeds neither from an order or formal charge of ours nor from a verified petition as required under the Rules of Court. It proceeds rather from the instant motion—a plain and ordinary motion—which was filed without any of the attending requirements of an initiatory pleading in a civil action. On this score, the instant motion may thus be considered as a procedural anomaly and may be denied outright.

The Instant Motion is Substantially Deficient

However, even if we consider the instant motion as adequate to initiate contempt proceedings against petitioner, the same would still have to be denied for it is substantially deficient.

At the heart of the instant motion is the accusation that petitioner defied our decision in the instant case when it rejected respondent's demand to arbitrate before the PDRCI. This accusation, of course, could have been valid had our decision obligated petitioner and the respondent to arbitrate before the PDRCI. But our decision, in fact, did nothing of such sort.

While our decision did require petitioner and respondent to go through arbitration, the same never required that they arbitrate *specifically* under the auspices of the PDRCI. As mentioned earlier, our decision had only obliged the petitioner and respondent to undergo arbitration pursuant to "*the arbitration clause of* [their] *2005 Lease Contract.*"[10] The said arbitration clause, however, never named the PDRCI, or any other arbitral institution for that matter, as the exclusive forum of arbitration between the petitioner and respondent:

> 19. x x x
>
> Any disagreement as to the interpretation, application or execution of this [2005 Lease Contract] shall be submitted to a board of three (3) arbitrators constituted in accordance with the arbitration law of the Philippines. The decision of the majority of the arbitrators shall be binding upon [FKI and respondent].[11]

[10] *Rollo*, Vol. I, p. 1358.
[11] Id. at 114.

It may be well to clarify at this point that the "*board of three (3) arbitrators constituted in accordance with the arbitration law of the Philippines*" mentioned in the above clause does not refer to the PDRCI. The *"board of three (3) arbitrators"* could not have been the PDRCI because the arbitration clause clearly spoke of the board as being *"constituted in accordance with the arbitration law of the Philippines"* and there is no arbitration law currently in force that sanctions the selection of the PDRCI as an arbiter in any arbitration without the express agreement to that effect between the disputants.

Since neither our decision nor the arbitration clause required the parties to arbitrate before the PDRCI, petitioner then was under no legal obligation to accept respondent's demand. Under this circumstance, petitioner may thus choose to reject the demand of respondent without actually committing a violation of our decision *per se*. Respondent cannot insist on its demand to arbitrate when such demand is not in accord with what was required by our decision and by its arbitration agreement with the petitioner. Any rejection of such kind of a demand is always valid, legal and within the petitioner's prerogative to do.

Verily, without a showing that petitioner defied or disobeyed our decision, the charge of indirect contempt against petitioner has no leg to stand on. The denial of the instant motion thus becomes inevitable.

IN VIEW WHEREOF, the instant motion is **DENIED**.

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court
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The Hon. Presiding Judge
Regional Trial Court, Br. 274
1700 Parañaque City
(Civil Case No. 10-0255)

The Hon. Presiding Judge
Regional Trial Court, Br. 257
1700 Parañaque City
(Civil Case No. CV 09-0346)

The Hon. Presiding Judge
Metropolitan Trial Court, Br. 77
1700 Parañaque City
(Civil Case No. 2009-307)

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