

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PILIPINAS SHELL PETROLEUM
CORPORATION,

Petitioner,

CTA Case No. 8121

-versus-

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

COMMISSIONER NAPOLEON
MORALES, as COMMISSIONER OF
CUSTOMS, JUAN N. TAN, as
COLLECTOR OF CUSTOMS OF THE
PORT OF BATANGAS and SIMPLICIO
DOMINGO,

Promulgated:

Respondents.

AUG 26 2011

x ----- *ABP Morales 4:26 p.m.* ----- x

D E C I S I O N

COTANGCO-MANALASTAS, J.:

Before this Court is a Verified Petition for Contempt filed on June 28, 2010 by Pilipinas Shell Petroleum Corporation, praying for this Court to hold Commissioner Napoleon Morales, Collector Juan N. Tan and Simplicio Domingo of the Bureau of Customs liable for indirect contempt of Court through the imposition of the penalties of fine and imprisonment.

THE FACTS

Pilipinas Shell Petroleum Corporation (petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office at the Shell House, 156 Valero Street, Salcedo Village,

Makati City, Metro Manila. Pilipinas Shell Petroleum Corporation is also the petitioner in CTA Case No. 8004, currently pending before the Court's Third Division.¹

On the other hand, respondent Napoleon Morales is the Commissioner of the Bureau of Customs (BOC), a government agency tasked to, among others, collect customs duties, taxes, fees and other charges under the Tariff and Customs Code of the Philippines and the other related laws, rules and regulations, as well as taxes in its capacity as collecting agent for the Bureau of Internal Revenue (BIR) under the National Internal Revenue Code (NIRC) and other related laws, rules and regulations.

Respondent Juan N. Tan is the District Collector of Customs Collection District No. IV at the Port of Batangas, who is a party-respondent in CTA Case No. 8004 currently pending before the Court's Third Division; while respondent Simplicio Domingo is the Chief of Legal Services of the BOC.

In the instant Petition, it was primarily alleged that:

“RESPONDENTS MUST BE HELD LIABLE FOR INDIRECT CONTEMPT IN VIOLATION OF SECTION 3, PARAGRAPHS (B) AND (D), RULE 71 OF THE RULES OF COURT WHEN THEY CONDUCTED THE PRESS CONFERENCE ON 08 APRIL 2010 AND CIRCULATED THE ‘PRESS STATEMENT’ WITH THE INTENT OF BRINGING THE LEGAL BATTLE FOR THE CCG/LCCG CASE TO THE MEDIA INSTEAD OF LEGALLY BEFORE THE HONORABLE COURT’S FIRST DIVISION (NOW THIRD DIVISION), THEREBY IMPEDING, OBSTRUCTING, AND DEGRADING THE ADMINISTRATION OF JUSTICE, AND IN DIRECT VIOLATION OF THE *RESOLUTION* DATED MARCH 12, 2010 OF THE HONORABLE COURT’S FIRST DIVISION.”

The CCG/LCCG case mentioned in the instant Petition is actually the Petition for Review filed by Pilipinas Shell Petroleum Corporation against the Commissioner

¹ Par. 2.1, Verified Petition for Contempt, docket, p. 112.

of Customs, the Collector of Customs of the Port of Batangas, and the Bureau of Customs, docketed as CTA Case No. 8004. It was during the pendency of the said case that the subject Resolution dated March 12, 2010 was issued, the pertinent portion of which reads:

“Likewise, during the pendency of the case, the parties and their respective counsels are **ADVISED** to refrain from discussing the merits of the case in the media as it may be considered **CONTEMPTOUS** by the Court.”

According to petitioner, respondents’ acts of organizing and holding a Press Conference at the Makati Revenue District Office and distribution of “Press Statement” to members of the media who attended the same were in direct contravention of the Resolution dated March 12, 2010, which expressly prohibited the parties to CTA Case No. 8004 and their counsel from divulging material information of the said case to the media.²

Petitioner maintains that as a lawful order of the Court’s First Division, respondents are obliged to abide by this order and should not have discussed material information of the said case to the media. However, in blatant violation of the Resolution dated March 12, 2010, respondents did not only give comments to the media, but during the Press Conference on April 8, 2010, accused the Presiding Justice of impropriety and engaged in unwarranted attacks against petitioner. The fact that respondents subsequently filed a Motion for Inhibition with this Court’s First Division clearly shows that respondents were fully cognizant that the matters discussed during the Press Conference fall squarely within the jurisdiction of this Court’s First Division.³ ✓

² Verified Petition for Contempt, docket, p. 123.

³ Verified Petition for Contempt, docket, p. 124.

On July 7, 2010, the instant case was consolidated with CTA Case No. 8004.⁴

Thereafter, respondents filed with this Court their *Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010)* on September 23, 2010.⁵

For its part, petitioner filed its *Reply [Re: Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010) Dated 21 September 2010]* on October 29, 2010.⁶

Respondents also filed their *Supplemental Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010)*⁷ on November 4, 2010 to which petitioner filed its *Reply Ad Cautelam [Re: Supplemental Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010) Dated 27 October 2010]*⁸ on November 24, 2010.

During the hearing held on March 10, 2011, the parties agreed to file their respective Memorandum within fifteen (15) days from March 10, 2011, after which the case for indirect contempt shall be submitted for resolution.⁹

Accordingly, petitioner filed its Memorandum¹⁰ on March 25, 2011; while respondents filed their Memorandum¹¹ through registered mail on March 29, 2011. Subsequently, the case was submitted for decision on April 14, 2011.¹²

ISSUE

The sole issue in this case is whether or not respondents are liable for indirect contempt under Sections 3(b) and (d) of Rule 71 of the Rules of Court. 

⁴ Docket, p. 202.

⁵ Docket, pp. 313-343.

⁶ Docket, pp. 375-417.

⁷ Docket, pp. 439-447.

⁸ Docket, pp. 450-457.

⁹ Transcript of Stenographic Notes of the hearing held on March 10, 2011, p. 13.

¹⁰ Docket, pp. 493-565.

¹¹ Docket, pp. 659-720.

¹² Docket, p. 728.

COURT'S RULING

Petitioner alleges that respondents violated Section 3(b) and (d) of Rule 71 of the 1997 Rules of Civil Procedure, as amended.

Section 3(b) of Rule 71 of the 1997 Rules of Civil Procedure, as amended, provides:

“SEC. 3. Indirect contempt to be punished after charge and hearing. – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

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(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;”

In proceeding against a person alleged to be guilty of contempt of court, it must be emphasized that such proceedings are commonly treated as criminal in nature even when the acts complained of are incidents of civil actions. For this reason, the mode of procedure and rules of evidence in contempt proceedings are assimilated as far as practicable to those adapted to criminal prosecutions. Moreover, it is well settled that a person cannot be held liable for contempt in the violation of an injunction or in fact of any judicial order unless the act which is forbidden or required to be done is clearly and exactly defined, so as to leave no reasonable doubt or uncertainty as to what specific act or thing is forbidden or

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required. A party cannot be punished for contempt in failing to do something not specified in the order.¹³

To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court or tribunal. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.¹⁴

On the other hand, Section 3(d) of Rule 71 of the 1997 Rules of Civil Procedure, as amended, states:

“d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;”

In the case of *People of the Philippines vs. Godoy*¹⁵, the Supreme Court ruled that contemptuous conduct described under paragraph (d) of Section 3 of Rule 71 of the Rules of Court constitutes criminal contempt considering the nature, purpose and character of the proceeding. Accordingly, the burden of proof to be discharged is proof beyond reasonable doubt. The pertinent portion of the Resolution of the High Court in said case reads:

“The exercise of the power to punish for contempt has a dual aspect, primarily, the proper punishment of the guilty party for his disrespect to the court, and, secondarily, his compulsory performance of some act or duty required of him by the court and which he refuses to perform. Due perhaps to this two fold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal. However, the line of demarcation between acts constituting criminal contempt, as distinguished from civil contempt, is quite indistinct. The confusion in attempts to classify civil and criminal contempts is due to the fact that there are contempts in which both elements appear; or there are contempts which are neither wholly civil nor altogether criminal, but partake of the

¹³ *Lee Yick Hon vs. The Insular Collector of Customs*, G.R. No. L-16779, March 30, 1921.

¹⁴ *Bank of the Philippine Islands vs. Calanaza, et al.*, G.R. No. 180699, October 13, 2010.

¹⁵ G.R. Nos. 115908-09, March 29, 1995.

characteristics of both; or it is also possible that the same act may constitute both a civil and criminal contempt.

A. As to the Nature of the Offense

A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. xxx

A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. xxx

It has further been stated that intent is a necessary element in criminal contempt, and that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. xxx

B. As to the Purpose for which the Power is Exercised

A major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court; private parties have little, if any, interest in the proceedings for punishment. xxx

C. As to the Character of the Contempt Proceeding

It has been said that the real character of the proceedings is to be determined by the relief sought, or the dominant purpose, and the proceedings are to be regarded as criminal when the purpose is primarily punishment. xxx

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and

criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

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Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. xxx” (*Emphasis supplied*)

In view of the foregoing legal principle, this Court shall now determine whether respondents are liable for indirect contempt.

According to petitioner, respondents are liable for the following contemptuous acts:

1. Respondent Morales, as one of the parties to CTA Case No. 8004, in connection with the Press Conference and the distribution of the “Press Statement”, was even quoted in the April 9, 2010 article of the Philippine Daily Inquirer¹⁶ stating:

“Judicial ethics mandate that a judge disclose his connections with a party to a case before him in order to place himself above reproach and suspicion, Morales said.

Citing the Code of Judicial Conduct, the Customs chief said Acosta should disqualify himself from taking part in the case.

Acosta may be ‘unable to decide the matter impartially or may appear to a reasonable observer that [he] is unable to’, Morales said.”

2. The Press Conference was organized and the “Press Statement”¹⁷ was distributed obviously to benefit respondents in CTA Case No. 8004 pending with the Court’s First Division; ✓

¹⁶ Annexes “F-3” and “F-7”, Verified Petition for Contempt.

¹⁷ Annex “E”, Verified Petition for Contempt.

3. Respondent Domingo himself, as the Chief of Legal Services of the BOC, presided during the Press Conference and spoke on behalf of respondents when they discussed matters involving CTA Case No. 8004. Respondent Domingo's participation was even documented in an article of the Manila Times on April 9, 2010;¹⁸
4. In News Tonight aired on IBC 13, respondent Domingo was allegedly quoted saying the following comments during the Press Conference¹⁹:

“Obligation to the Government is 7.3 Billion. What company or what surety company can held (sic) that asset or capital at least to pay that obligation just in case Shell lost? Nakikita n'yo ba yung point ko? No...no surety company has that asset 7.3 Billion. Sinasabi nila they want to go to the government insurance system, GSIS. We told them, how can you do that?”

5. Likewise, on NET25's I-Balita, respondent Domingo was caught stating during the Press Conference that an alleged conflict of interest exists on the part of Presiding Justice Acosta as the Presiding Justice for CTA Case No. 8004 when he used to be an employee of petitioner²⁰:

“The Judge being a former employee of the Shell and now hearing the case of Shell to be resolved by him would mean a conflict interest, a clear case of conflict interest that why we are filing this. The Supreme Court it says here, he is the fiscal services assistant. Assistant tax counsel Shell Group Companies of the Philippines, Ermita Manila, October 1975 to March 1981.”

Respondents counter-argue that a plain examination of the dispositive portion of the subject Resolution would instantly show that it did not provide for an absolute prohibition against making any statements relating to CTA Case No. 8004, but instead, it deliberately did not use terms that denote absolute and unconditional compliance. ✓

¹⁸ Annex “F-2”, Verified Petition for Contempt.

¹⁹ Annex “B-2”, Reply [Re:Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010) Dated 21 September 2010].

²⁰ Annex “B-3”, Reply [Re:Comment (On Petitioner's Verified Petition for Contempt dated 28 June 2010) Dated 21 September 2010].

Respondents contend that its attendance in the BIR press briefing is justified on the ground that the same was done in good faith, pursuant to their duty as public officers and per instruction of Undersecretary Narciso Santiago, Presidential Assistant on Revenue Enhancement. Respondent Commissioner even failed to attend the BIR Press Briefing as he accompanied the President in Vietnam and Respondent Collector, although he was then present, did not make any statement to the media. Moreover, by attending the BIR press briefing, respondents merely performed their Constitutional duty to provide the public with information, and to punish them for complying with their constitutional mandate would amount to injustice and persecution. Thus, the instant Petition lacks merit and must necessarily fail.

After a close study and review of the instant Petition, this Court finds that there is no evidence on record to show, beyond doubt, that respondents are liable for indirect contempt.

Upon careful examination of the records of this case, the Court finds that:

1. There was doubt in the mind of respondent as to the real import of the Order advising the parties to refrain from discussing the merits of the case, as to whether it is absolute or permissive;
2. Petitioner failed to support its averments specifying the direct participation of each of the respondents in the acts alleged to be contemptuous;
3. Petitioner failed to prove that the subject Press Conference was organized by the respondents themselves;
4. Petitioner failed to establish that the foregoing utterance was directly intended to malign or impair upon the dignity of the Court. Hence, petitioner failed to prove the element of "intent" on the part of respondents;
5. Petitioner failed to establish that the alleged Press Statement which was submitted by petitioner originated from ✓

respondents. Thus, the Court cannot give weight to the subject Press Statement from which the rest of the charges made by petitioner were based; and

6. Aside from the excerpts taken from newspaper clippings and statements taken from television news reports, petitioner failed to present the transcript of the Press Conference which could have revealed what actually transpired in the said Press Conference.

A criminal contempt proceeding has been characterized as *sui generis* as it partakes some of the elements of both civil and criminal proceedings, without completely falling under either proceeding. Its identification with a criminal proceeding is in the use of the principles and rules applicable to criminal cases, to the extent that criminal procedure is consistent with the summary nature of a contempt proceeding. The Supreme Court has consistently held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt; that the accused is afforded many of the protections provided in regular criminal cases; and that proceedings under statutes governing them are to be strictly construed.²¹

Equally settled is the rule that contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. The presumption of innocence can be overcome only by proof of guilt beyond reasonable doubt, which means proof to the satisfaction of the court and keeping in mind the presumption of innocence that precludes every reasonable hypothesis except that for which it is given. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely true than the contrary. It must establish the truth ✓

²¹ Resolution of the Supreme Court *En Banc* dated July 5, 2011 in *Edita T. Burgos vs. President Gloria Macapagal-Arroyo, et al.*, G.R. Nos. 183711, 183712, and 183713.

of the fact to a reasonable certainty and moral certainty – a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.²²

For all the foregoing, this Court finds that petitioner failed to prove, beyond reasonable doubt, that respondents are liable for indirect contempt.

At this juncture, it bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment.²³ As aptly ruled by the Supreme Court in the case of *Nazareno v. Barnes*:

“A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may not altogether be flattering to him. After all, what matters is that a judge performs his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.”²⁴

In this case, even if the afore-mentioned statements were actually delivered by respondents in the Press Conference, there is no showing that respondents made such utterances to malign the Court. Rather, they were used to express what they believed as a violation of the basic principle of judicial ethics and to show their intention to file a Motion for Inhibition before this Court. Accordingly, the subject statements, taken in isolation from the rest of the presumptions made by petitioner, cannot be considered by this Court as contemptuous. ✓

²² *Ibid.*

²³ *The Senate Blue Ribbon Committee, et al. vs. Majaducon, et al.*, G.R. Nos. 136760 and 138378, July 29, 2003.

²⁴ *Ibid.*, citing 136 SCRA 57 (1985).

WHEREFORE, premises considered, the instant Petition for Indirect Contempt is hereby **DISMISSED** for lack of merit. However, both parties are hereby reminded to be more cautious in their dealings with the media in order for this Court to have a fair and orderly disposition of the subject case, unhampered by any extraneous influence that may tend to impair the impartiality of verdicts.

SO ORDERED.


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(on official business)
LOVELL R. BAUTISTA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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


OLGA PALANCA-ENRIQUEZ
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice