

KENNETH COBONPUE,
Complainant,

-versus-

CHRISTIAN JOHN RECTO CO doing
Business under the name and styles of
CMG RATTAN FURNITURE SHOP
and/or **CMG RATTAN FURNITURE,**
Respondent(s),

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} **IPV No. 10-2011-00007**
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For: Copyright Infringement,
Injunction and Damages with
Prayer of a Writ of
Preliminary Injunction

NOTICE OF ORDER

BONACHITA LAW OFFICE

Counsel for the Complainant
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Counsel for the Respondent
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GREETINGS:

Please be informed that Order No. 2016 - 01 (D) dated February 15, 2016 (copy enclosed) was promulgated in the above entitled case.

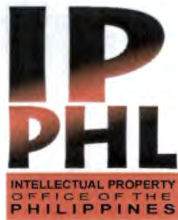
Taguig City, February 15, 2016.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs

Republic of the Philippines
INTELLECTUAL PROPERTY OFFICE

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Order No. 2016- 01 (D)

ORDER

KENNETH COBONPUE¹ ("Complainant"), filed a complaint against **CHRISTIAN JOHN RECTO**, doing business under the name and styles of **CMG RATTAN FURNITURE SHOP** and/or **CMG RATTAN FURNITURES**² ("Respondent") for Copyright Infringement, Injunction, and Damages with prayer for Preliminary Injunction on 23 May 2011.

Complainant alleges, among others, the following:

"3. The Complainant is an internationally well known and famous creator, originator, designer and owner of intellectual property rights, including **copyrights, of various original designs for world-class furniture products**. He manufactures and sells these copyright-protected furniture items through Interior Crafts of the Island, Inc., of which he is the Chief Executive Officer. The designs of the complainant of his furniture product and his furniture product themselves are so distinctive such that everyone in the industry, both in the country and abroad, has come to recognize these furniture designs and furniture items as the Complainant's signature design and items.

"4. The Complainant is the copyright owner of various original designs for his furniture products. These designs and the resulting products are original creations of the Complainant and he owns the copyrights over the said designs and products pursuant to Section 172.1 of Republic Act. No. 8293 ("R.A. 8293"), otherwise known as the Intellectual Property Code of the Philippines, which provides that **intellectual creations in the artistic domain are protected from the moment of their creation**.

¹ Filipino with business address at 3-A General Maxilom Avenue, 6000 Cebu City, Cebu.

² Filipino with business address at 3/F Home Market, Market Market, Global City, Taguig City.

x x x

"7. Among the Complainant's well-known furniture designs are as follows:

a) **Yin & Yang easy armchair and love seat**

x x x

b) **Yoda Easy Chair**

x x x

c) **La Luna Easy Armchair**

x x x

d) **Noodle Armchair**

x x x

e) **Ima Bed**

x x x

f) **Voyage Bed**

x x x

g) **Matilda Sofa and Armchair**

x x x

h) **Wave Dining Table**

x x x

i) **Suzy Wong Bed**

x x x

"8. The Respondent has the following stores:

a) CMG RATTAN FURNITURE SHOP at 2/F Lifestyle Center, **Greenhills**, San Juan City, Metro Manila;

b) CMG RATAN FURNITURE SHOP at 3/F Home Market, **Market Market**, Global City, Taguig City, Metro Manila;

a) CMG RATTAN FURNITURE SHOP at 4/F Festival Mall, **Alabang**, Muntinlupa City, Metro Manila.

"9. Without Complainant's consent, the Respondent's sad stores, respectively, are exhibiting, advertising for sale, and selling furniture items which are very similar, if not exactly the same, and are copyright infringing versions of the furniture designs and products of the Complainant.

"10. Demand letters were previously sent to these stores asking them to cease selling furniture items that infringe on the Complainant's copyright-protected designs and products.

"11. The said demand letters were not heeded as the Respondent's stores, respectively, are still exhibiting, advertising for sale, and selling furniture items which are copyright-infringing versions of the following furniture and design products of the Complainant.

"12. The Respondent's **CMG RATTAN FURNITURE SHOP** at 3/F Home Market, **Market Market**, Global City, Taguig City, Metro Manila, has a 'clear book' where they advertise the furniture designs that they can manufacture and sell. Among those included and offered in the 'clear book' are furniture items infringing on the Complainant's **Ima Bed, Voyage Bed, Matilda Sofa, and Wave Dining Table**.

"13. The Respondent's **CMG RATTAN FURNITURE SHOP** at 4/F Festival Mall, **Alabang**, Muntinlupa City, Metro Manila, has a 'clear book' where they advertise the furniture designs that they can manufacture and sell. Among those included and offered in the 'clear book' are cut out pictures showing furniture items infringing on the Complainant's **Ima Bed, Voyage Bed, Matilda Sofa, Wave Dining Table, Matilda Armchair and Suzy Wong Chair**.

"14. The Respondent is guilty of copyright infringement for manufacturing, exhibiting, advertising for sale, and selling products which infringe on the copyright-protected designs of the Complainant's furniture products. Sec. 177 of R.A. 8293 provides:

x x x

"15. The Complainant has the right to prevent the infringement of his copyright protected designs. He also has the right to an injunction to restrain the acts of infringement committed by the Respondent in accordance with Section 216 of R.A. 8293.

"16. The Respondent's acts of infringement caused the Complainant to sustain actual damages and lost profits from the sales that he could have realized were it not for the Respondent's infringement. For these violations, the Complainant suffered actual damages and lost profits of not less than the sum of P1,000,000.00.

"17. The Respondent's unscrupulous acts of infringement caused the Complainant serious anxiety, mental anguish, wounded feelings, and sleepless nights for which the Complainant should be awarded the sum of P500,000.00 as moral damages by the Respondent.

"18. By way of example and correction for the public good and in order to put a stop to the unscrupulous act of freeloading which the Respondent should be made to pay Complainant exemplary damages in the sum of P200,000.00.

"19. The Respondent's infringement compelled the Complainant to litigate and to incur litigation expenses and attorney's fees in the amount of not less than P300,000.00. Hence, the Respondent should be ordered to reimburse the Complainant the said sum and such actual sums spent by the Complainant for the case."

On 26 May 2011, this Bureau sent a Notice to Respondent directing him to file the Answer and Counter-Affidavit on the application of Complainant for issuance of a writ of

injunction. On 10 June 2011, Respondent filed his Answer and Counter-Affidavit thru registered mail. On 25 October 2011, this Bureau issued the writ of injunction enjoining Respondent or any other person or entity in his behalf from making, advertising, displaying, offering for sale, selling and transporting furniture products similar to Complainant's.

When the case was set for mediation, Respondent or his authorized representative failed to appear twice. As such, the mediation was terminated and the case was set for pre-trial conference. However, the Respondent or his counsel did not appear during the scheduled pre-trial conference. This prompted the Complainant to file a motion in open court to declare the Respondent in default for failure to appear in both instances. The Hearing Officer granted the oral motion and declared the Respondent in default. This allowed the *ex parte* presentation of Complainant's evidence as provided in the Rules of Court, which apply suppletorily in this proceeding. Complainant presented his sole witness, Alfonso Eugenio Soler, Operations Manager of Complainant's company stated above. The witness also identified various documentary exhibits. Complainant then filed his Formal Offer of Exhibits on 12 July 2012, which was admitted by this Bureau. On 31 July 2012, Complainant filed his memorandum.

On 29 April 2013, Respondent through his new counsel filed an Omnibus Motion (1) To Lift Order of Default; and (2) To Reconsider and Set Aside Order submitting case for Decision. Consequently, this Bureau released an Order on 22 May 2013 giving the Complainant ten (10) days to file a Comment. However, no comment/opposition was submitted. Thus, on 02 July 2014, this Bureau issued an Order granting the Omnibus Motion of Respondent To Lift Order of Default and set the cross-examination of Complainant's sole witness. The Complainant or his counsel, however, did not appear during the scheduled cross-examination. On 26 August 2014, Respondent filed a Motion to Strike Off From the Records the testimony of Complainant's sole witness with an alternative prayer for the dismissal of the case due to violation of the rules on non-forum shopping. This Bureau issued an Order directing Complainant to file his Comment on the Motion. The Order was served to Complainant's counsel on 03 September 2014. The Bureau gave a ten (10)-day period to file, but to no avail since no response was received from the Complainant. Notwithstanding, this Bureau issued another Order giving Complainant ten (10) days to file his Comment to Respondent's last Motion. The Order was received by a certain Malou Ramous and Neves Evangelin on 24 and 25 May 2015, respectively, on behalf of the Complainant. Despite this, however, no Comment or Objection was filed by the Complainant up to this date.

After a judicious evaluation of the circumstances of this case and applicable law and jurisprudence, this Bureau grants the Motion to Strike Off from the Records the testimony of Complainant's sole witness, Alfonse Eugenio E. Soler. All documentary evidence identified by said witness are also hereby ordered stricken off. Corollary, this Bureau also orders the dismissal of the case due to Complainant's failure to prosecute.

When this Bureau lifted the order of default, such act effectively restored Respondent's standing before this body. Exercising its discretion, the Bureau also reopened the evidence submitted by Complainant. This lends credence to this Bureau's Order setting of cross-examination of Complainant's witness. This ruling of the Bureau finds support in the case of *Philippines Banking Corporation vs. Court of Appeals, et al.*³ where the Supreme Court ruled that:

Prior to the denial of the motion, the trial court had properly declared the BANK in default. Since the BANK was in default, Marcos was able to present his evidence *ex parte* including his own testimony. When the trial court lifted the order of default, the BANK was restored to its standing and rights in the action. However, as a rule, the proceedings already taken should not be disturbed. Nevertheless, it is within the trial court's discretion to reopen the evidence submitted by the plaintiff and allow the defendant to challenge the same, by cross-examining the plaintiff's witnesses or introducing countervailing evidence. The 1964 Rules of Court, the rules then in effect at the time of the hearing of this case,

³ Philippines Banking Corporation v. Court of Appeals, et al., G. R. No. 127469, January 15, 2004.

recognized the trial court's exercise of this discretion. The 1997 Rules of Court retained this discretion.

The right to cross-examination is an essential part of the right to procedural due process. This doctrine is echoed in the case of *Savory Luncheonette vs. Manggagawang Pilipino, et al.*⁴ where the Court had to opportunity to state:

The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process.

This jurisprudence traces its basis on the Constitution⁵ and the Rules of Court⁶. It is once again emphasized that this right to confrontation is available since party initially declared in default has been restored to his original standing and now continue to possess inherent rights in litigation. Procedural Rules further dictate that if the adverse party was not afforded the opportunity to cross-examine the witness, the direct testimony may be stricken off upon motion, such as one filed by Respondent on 26 August 2014. The Court ruled in *Fulgado vs. CA, et al.*⁷:

There is no disputing that where there was no such opportunity (to cross examine) and the want of it was caused by the party offering (plaintiff), the testimony should be stricken out.

The hearsay rule also bars the admission of evidence that has not been given under oath or solemn affirmation and, more important, has not been subjected to cross-examination by opposing counsel. Cross-examination is required to rest the perception, the veracity and the articulateness of the out of court declaration, upon whose reliability the worth of the out-of-court statement depends.⁸ When cross-examination is not done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is rendered incompetent and should be stricken from the record.

This Bureau underscores that the Complainant had various opportunities to present his objection to Respondent's Motions. At the first instance, when Respondent filed the Omnibus Motion to Lift Order of Default and to Reconsider the Order submitting the case for decision, Complainant was directed to file his Comment or Opposition thereto, but he did not. The second time, Complainant did not file any Motion for Reconsideration to this Bureau's Order lifting the order of default and allowing the Respondent to cross-examine his witness. He also failed to appear during the date set for cross-examination and did not present any witness. When Respondent filed the Motion to Strike Off from Records the testimony of Complainant's sole witness as well as the documentary evidence, Complainant was given time to comment or oppose the same. Despite the non-filing of a comment or opposition, this Bureau did not immediately rule on the matter. Instead, it again served the Order, this time both to Complainant and his counsel. Still no comment was filed. Due to Complainant's inaction, this Bureau has no recourse but to grant the Motion to Strike Off the Testimony of Alfonso Eugene E. Soler and the corresponding documentary evidence identified during his testimony for being hearsay evidence.

Furthermore, the power of the court to dismiss the case for failure to prosecute the case for an unreasonable length of time rests upon the discretion of the court, and the same will not be disturbed in the absence of patent abuse. As to whether or not the delay is unreasonable depends on the environmental facts and circumstances of each case. Indeed, it is the duty and right of this body to dismiss a suit for failure to prosecute it with due diligence.⁹ Section 3, Rule 17 of the Rules of Court state:

⁴ *Savory Luncheonette vs. Manggagawang Pilipino, et al.*, G.R. No. L-38964, January 31, 1975.

⁵ PHIL. CONST. art III, § 14, ¶ 2.

⁶ The Revised Rules on Criminal Procedure [RULES ON CRIMINAL PROCEDURE] Rule 115, Section 1; The Revised Rules of Evidence [RULES ON EVIDENCE] Rule 132, Section 8.

⁷ *Fulgado vs. CA, et al.*, G.R. No. L-61570, February 12, 1990.

⁸ *Candido v. Mapili, et al.*, G.R. No. 146341, August 7, 2003.

⁹ *Republic (CAA) v. Guarin, et al.*, G.R. No. L-26367, January 31, 1978.

Dismissal due to fault of plaintiff. — If, for no justifiable cause, **the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion**, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. **This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.** (Emphasis Supplied)

To stress, the Court cited *De Knecht vs. CA*¹⁰ when it elucidated on dismissal due to failure to prosecute:


An action may be dismissed for failure to prosecute in any of the following instances: (1) **if the plaintiff fails to appear at the time of trial**; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) **if he fails to comply with the Rules of Court or any order of the court**. Once a case is dismissed for failure to prosecute, this has the **effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal**. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice.¹¹ (Emphasis Supplied)

This Bureau's discretion to dismiss the case due to Complainant's fault in accordance with Rule 17 is supported by the fact that his cause/s of action are anchored on his sole witness' testimony. Thus, testimony and related documentary evidence are indispensable in proving the truth of his allegations, absent which, the case will not hold water. Due to Complainant's inaction on this Bureau's Orders to submit a Comment or reply and his failure to appear during the hearing for cross-examination, he has lost his opportunity to assert the genuineness of his claims. This falls squarely on at least two of the three grounds to declare a failure to prosecute sufficient for dismissal of the case. This resolution renders Respondent's alternative prayer for dismissal of case due to the allegation of forum shopping as moot and academic. Considering the same, ruling on this issue will be dispensed with.

WHEREFORE, in view of the foregoing, the Motion to Strike Off from the Records is hereby **GRANTED**. Accordingly, since Complainant has no more evidence upon which the Complaint can stand and for failure of Complainant to prosecute his case, the Complaint is hereby **DISMISSED**.

SO ORDERED.

Taguig City, 15 February 2016.


NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs

¹⁰ *De Knecht v. CA*, G.R. 108015/109234, May 20, 1998.

¹¹ *Armed Forces of the Philippines Retirement and Separation Benefit Systems v. Republic*, G.R. No. 188956, March 20, 2013.