



Republic of the Philippines  
**Supreme Court**  
Baguio City

**FIRST DIVISION**

**SANGGUNIANG PANLUNGSOD NG BAGUIO CITY,** **G.R. No. 160025**

Petitioner,

- versus -

**JADEWELL PARKING SYSTEMS CORPORATION,**

Respondent.

X- - - - - X

**JADEWELL PARKING SYSTEMS CORPORATION,** **G.R. No. 163052**

Petitioner,

- versus -

**MAYOR BERNARDO M. VERGARA, CITY MAYOR OF BAGUIO, VICE MAYOR BETTY LOURDES F. TABANDA, VICE MAYOR OF BAGUIO, COUNCILOR BRAULIO D. YARANON, COUNCILOR ELMER O. DATUIN, COUNCILOR ANTONIO R. TABORA, JR., COUNCILOR GALO D. WEYGAN, COUNCILOR EDILBERTO B. TENEFRANCIA, COUNCILOR FEDERICO J. MANDAPAT, JR., COUNCILOR RICHARD A. CARINO, COUNCILOR FAUSTINO A. OLOWAN, COUNCILOR DELFIN V. BALAJADIA, COUNCILOR RUFINO M. PANAGAN, CITY SECRETARY RONALDO B. PEREZ, SANGGUNIANG PANLUNGSOD NG BAGUIO,**

Respondents.

X- - - - - X

JADEWELL PARKING SYSTEMS CORPORATION,  
  
Petitioner,

G. R. No. 164107

- versus -

CITY MAYOR BRAULIO D. YARANON,  
  
Respondent.

X- - - - - X

JADEWELL PARKING SYSTEMS CORPORATION,  
  
Petitioner,

G. R. No. 165564

- versus -

CITY MAYOR BRAULIO D. YARANON,  
  
Respondent.

X- - - - - X

JADEWELL PARKING SYSTEMS CORPORATION,  
  
Petitioner,

G. R. No. 172215

- versus -

JUDGE FERNANDO VIL PAMINTUAN, PRESIDING JUDGE OF BRANCH 3 OF THE REGIONAL TRIAL COURT OF BAGUIO CITY, BENEDICTO BALAJADIA, PATERNO AQUINO, RICHARD LABERINTO, ROLANDO ABELLERA, FERNANDO SANGALANG, ALLAN ATOS, ANGELINO SANGALANG, CITY OF BAGUIO, AND CITY MAYOR BRAULIO D. YARANON,  
  
Respondents.

X- - - - - X

JADEWELL PARKING SYSTEMS CORPORATION,  
  
Petitioner,

G. R. No. 172216

- versus -

JUDGE FERNANDO VIL  
PAMINTUAN,  
PRESIDING JUDGE, BRANCH 03  
REGIONAL TRIAL COURT OF  
BAGUIO CITY,  
  
Respondent.

X- - - - - X

JADEWELL PARKING SYSTEMS CORPORATION,  
  
Petitioner,

G. R. No. 173043

- versus -

CITY MAYOR BRAULIO D.  
YARANON,  
  
Respondent.

X- - - - - X

JADEWELL PARKING SYSTEMS CORPORATION,  
  
Petitioner,

G. R. No. 174879

- versus -

ACTING CITY MAYOR AND  
FORMERLY VICE MAYOR AND  
PRESIDING OFFICER OF THE  
SANGGUNIANG PANLUNGSOD NG  
BAGUIO, REINALDO A. BAUTISTA,  
JR., MEMBERS OF THE  
SANGGUNIANG PANLUNGSOD NG  
BAGUIO, LEONARDO B. YANGOT,  
JR., ROCKY THOMAS A.

**BALISONG, EDILBERTO B.  
TENEFRANCIA, FAUSTINO A.  
OLOWAN, GALO P. WEYGAN,  
FEDERICO J. MANDAPAT,  
PERLITA L. CHAN-RONDEZ,  
ANTONIO R. TABORA, JOSE M.  
MOLINTAS AND RUFINO M.  
PANAGAN AND CITY LEGAL  
OFFICER MELCHOR CARLOS R.  
RABANES,**

Respondents.

X- - - - - X

**CITY MAYOR BRAULIO D.  
YARANON,**

Petitioner,

**G. R. No. 181488**

- versus -

Present:

**JADEWELL PARKING SYSTEMS  
CORPORATION, HON. EXECUTIVE  
SECRETARY EDUARDO R.  
ERMITA, ACTING BY AUTHORITY  
OF THE PRESIDENT, AND HON.  
RONALDO V. PUNO, IN HIS  
CAPACITY AS SECRETARY OF  
THE DEPARTMENT OF INTERIOR  
AND LOCAL GOVERNMENT,**

Respondents.

SERENO, *CJ*,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, *JJ*.

Promulgated:

**APR 23 2014**

X- - - - - X

## DECISION

**SERENO, *CJ*:**

Before this Court are nine (9) Petitions involving essentially the same parties – officials of the City Government of Baguio and Jadewell Parking Systems Corporation (Jadewell). The only party here that is neither an official of the City Government of Baguio nor an officer of Jadewell is former Judge Fernando Vil Pamintuan.

The two principal parties executed a Memorandum of Agreement (MOA) on 26 June 2000, whereby the City of Baguio authorized Jadewell to regulate and collect parking fees for on-street parking in the city, as well as to implement the installation of modern parking meters.

The legal disputes embodied in the nine Petitions began when the Sangguniang Panlungsod of Baguio City (Sanggunian) revoked the MOA through ***City Resolution No. 037, Series of 2002*** (Resolution 37), alleging substantial breach of the MOA on the part of Jadewell. Then Mayor Alfredo Vergara vetoed the Resolution. The Sanggunian Panlungsod overrode the veto through an unnumbered ***Resolution dated 17 April 2002***. These twin Resolutions constitute what we call here as **the first act of rescission<sup>1</sup> of the MOA by the city officials of Baguio**. Jadewell denied the breach and commenced an action before the Regional Trial Court (RTC) of Baguio,<sup>2</sup> questioning the validity of the MOA's revocation and the Sanggunian's capacity to pass a resolution revoking the MOA.

**There was a second act of rescission that the city officials of Baguio performed in 2006, the circumstances of which will be narrated later on.**

While the main case was under litigation, and then under appeal, the parties filed contempt charges against each other. Six of these cases are part of the consolidated Petitions before us.

These nine highly-voluminous cases, however, all boil down essentially to just these five sets of legal questions requiring resolution:

(a) The validity or invalidity and legal efficacy of Sanggunian's two distinct acts of rescission of the MOA;

(b) The duty of a trial judge to dismiss a case assailing the validity of the MOA and the city resolution approving it in view of the pendency of the various petitions before this Court;

(c) the liability of : (i) respondent city officials of Baguio, for various counts of indirect contempt of this court, (ii) some respondents, who are lawyers at the same time, for acts that require the disciplinary action of disbarment, (iii) respondent Judge Pamintuan, for taking cognizance of a civil case allegedly in defiance of this Court's authority;

(d) the validity of the administrative suspension of one of the respondents herein, former Mayor Braulio Yaranon, by the Office of the President in relation to his acts of non-recognition of the MOA; and

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<sup>1</sup> By "rescission" we mean "resolution" as provided for in Article 1191 of the Civil Code of the Philippines.

<sup>2</sup> The case was docketed as Civil Case No. 6089-R and assigned to Regional Trial Court of Baguio City (Branch 3) then presided by Judge Fernando Vil Pamintuan.

(e) the nullification of certain acts of officials of Baguio City directed against Jadewell pursuant to their belief that the latter had no authority to continue implementing the terms of the MOA.

### THE ANTECEDENT FACTS

On 1 March 1999, Jadewell proposed the privatization<sup>3</sup> of the administration of on-street parking in Baguio City using Schlumberger's DG4S Pay and Display Parking Meter (hereinafter "DG4S P&D"), which it touted as "technologically advanced, up to the level of more progressive countries and which would make the city as the first and only city in the Philippines, if not in Asia, to have metered parking as an important part of its traffic and parking system."<sup>4</sup>

Respondent Sanggunian acted favorably on the proposal.<sup>5</sup> On 31 May 2000, it passed ***Resolution No. 159, Series of 1999***, authorizing the City Mayor of Baguio to negotiate and enter into a Memorandum of Agreement with Jadewell for the installation of its proposed DG4S parking technology.<sup>6</sup>

On 16 July 1999, the City Mayor of Baguio wrote to Jadewell, transmitting to it the **finalized draft** of the MOA, with amendments emanating from his office. The City Mayor informed Jadewell that the **finalization of the MOA would be subject to the appropriate action of the Sanggunian** and the passage of an enabling ordinance.<sup>7</sup>

On 27 March 2000, respondent Sanggunian enacted ***City Ordinance No. 003, Series of 2000*** (Ordinance No. 003-2000) amending ***Ordinance No. 13, Series of 1983***, outlining the rules and policy on the privatization of the administration of on-street parking in the city streets of Baguio.<sup>8</sup> For this purpose, the City of Baguio authorized the intervention of a private operator for the regulation, charging and collection of parking fees and the installation of modern parking meters, among others.

On 10 April 2000, the City Legal Officer of Baguio City advised the City Mayor that the project for the regulation of on-street parking and installation of parking meters was not an infrastructure. Hence, the project was not covered by the Build-Operate-Transfer Law<sup>9</sup> and did not require publication of a notice for its validity.<sup>10</sup>

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<sup>3</sup> *Rollo* (G.R. No. 160025), p. 360.

<sup>4</sup> *Id.* at 394.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 37.

<sup>7</sup> *Id.* at 37-38.

<sup>8</sup> *Id.* at 71.

<sup>9</sup> Republic Act No. 6957 – "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes."

<sup>10</sup> *Rollo* (G.R. No. 160025), p. 2984.

Nevertheless, for the sake of transparency, the City Legal Officer recommended the publication of the appropriate notice on the project and an invitation to bid. An invitation to bid for the proposed regulation of on-street parking and installation of parking meters on Baguio City's streets was published in the *Philippine Daily Inquirer* on 8, 9 and 10 May 2000. Four interested bidders submitted their proposals, but three were disqualified. The bid of Jadewell was the only one not disqualified; hence, it was awarded the project.<sup>11</sup>

On 26 June 2000, the MOA was finally executed between Jadewell and the City of Baguio – through its then City Mayor, Mauricio G. Domogan – for the installation, management and operation of the DG4S P&D parking meters.<sup>12</sup>

On 17 July 2000, the Sanggunian confirmed the MOA through its ***Resolution No. 205-2000***.<sup>13</sup>

On 31 August 2000, the parties executed a supplemental MOA to include the Ganza/Burnham parking space, owned by the Philippine Tourism Authority and managed by the City of Baguio, in the project.<sup>14</sup> **This supplemental agreement was neither confirmed nor ratified by the Sanggunian.**

In September of 2000, Jadewell began to mobilize and take over the parking facilities at the Ganza/Burnham Park area.<sup>15</sup> Around this time, questions arose regarding the compliance by Jadewell with the provisions of the MOA, notably on matters such as obtaining the recommendation from the Department of Public Works and Highways (DPWH) for the installation of the parking meters and the legality of the collection of parking fees being done by its parking attendants prior to the installation of the parking meters at Burnham Park.<sup>16</sup>

On 20 December 2000, Jadewell wrote then Vice-Mayor Daniel T. Fariñas to inform him of the progress of the deputization by the Department of Transportation and Communications–Land Transportation Office (DOTC-LTO) of parking attendants required for the implementation of the MOA. Jadewell explained that they were still working on the required deputization of Jadewell's parking attendants. Nevertheless, it claimed that its parking attendants were authorized to collect parking fees pending the actual installation of the parking meters. It also claimed that the parking

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<sup>11</sup> Id. at 2985.

<sup>12</sup> Id. at 107.

<sup>13</sup> Id. at 39.

<sup>14</sup> *Rollo*, (G.R. NO. 164107), pp. 145-146.

<sup>15</sup> Id. at 2986.

<sup>16</sup> Id. at 2987.

meters had not yet been installed because the necessary civil works were yet to be completed.<sup>17</sup>

Shortly thereafter, a case was filed by Edgar M. Avila, *et al.* with the RTC-Baguio City (Branch 61), assailing Ordinance No. 003-2000 as unconstitutional and seeking to restrain the City Government of Baguio from implementing the provisions of the MOA. It further alleged that the City Government could not delegate the designation of pay parking zones to Jadewell, that the parking attendants deployed by Jadewell were not deputized, and that the questioned ordinance creates class legislation as the designated taxi and jeepney stands were discriminatorily removed. The case was docketed as Civil Case No. 4892-R.<sup>18</sup> This was dismissed on motion by Jadewell joined by the City Government of Baguio. The lower court declared that Ordinance No. 003-2000 is constitutional and that all acts emanating from it are deemed “reasonable and non-discriminatory...having been enacted in accordance with the powers granted to Baguio City by law.”<sup>19</sup> Complainants’ Motion for Reconsideration (MR) was denied.

On 24 August 2001, Edgar Avila, *et al.*, filed a Rule 65 Petition for Certiorari, Prohibition and Mandamus with the Supreme Court assailing the RTC’s dismissal of their Complaint. The case was docketed as G.R. No. 149642. On 10 October 2001, this Court issued a Resolution dismissing the petition of Avila, *et al.* for failure to state in their petition the material dates when they received the appealed resolution and order, and to append the original or certified true copies of the questioned resolution and order subject of their petition.<sup>20</sup> There was no resolution on the merits. The Resolution became final and executory on 2 April 2002.<sup>21</sup>

A case was also filed by Nelia G. Cid against then Mayor Bernardo Vergara, *et al.* when her vehicle was clamped, towed away, and impounded by Jadewell after the latter found her car to be illegally parked. She refused to pay the corresponding fees to Jadewell and as a result, the latter refused to release her vehicle.<sup>22</sup> Cid filed a case for replevin and questioned the validity of Ordinance No. 003-2000 and the MOA, as well as the authority of Jadewell to clamp down/tow away vehicles whose owners refuse to pay parking fees. The case was docketed as Civil Case No. 5165-R and was assigned to Branch 7 of RTC-Baguio. On 24 May 2002, an Omnibus Order was issued by this RTC that addressed several pending incidents related to the authority of Jadewell to clamp down/tow away vehicles. The Omnibus Order upheld Jadewell’s authority to retain the vehicle of petitioner Nelia G. Cid pending her payment of the parking and towage fees to Jadewell, and held that the authority of Jadewell was lawfully provided in Ordinance No.

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<sup>17</sup> *Id.*

<sup>18</sup> *Rollo* (G.R. No. 172215), pp. 351-352.

<sup>19</sup> *Id.* at 359.

<sup>20</sup> *Id.* at 362.

<sup>21</sup> *Id.* at 366.

<sup>22</sup> RTC records (Civil Case No. 6089-R – RTC-Br. 07 – Baguio City), pp. 85-86.



003-2000 and the MOA. Also, the RTC-Baguio took cognizance of the ruling by this Court in G.R. No. 149642 which, in its mistaken view, upheld the validity of the questioned ordinance and the MOA.<sup>23</sup>

Ultimately, Jadewell was able to install no more than 14 parking meters in three (3) areas of Baguio City: six (6) on Session Road, five (5) on Harrison Road and three (3) on Lake Drive.<sup>24</sup> At the time that these meters were installed, there were already verbal complaints being raised against Jadewell by the Sanggunian for the following alleged violations:

- a. Failure to install parking meters for each parking space as specified in Section 3-F of Ordinance No. 003-2000;<sup>25</sup>
- b. Failure to install a convenient and technologically advanced parking device that is solar-powered and can measure the time a vehicle stays in a parking slot;<sup>26</sup>
- c. Failure to give the City of Baguio the latter's share of the collected parking fee;<sup>27</sup>
- d. Failure to post a performance bond in the amount of ₱1 million after its previous bond expired.<sup>28</sup>

The Sanggunian passed *Resolution No. 395, Series of 2000*, directing Jadewell to comply with its obligations under the MOA for the installation of the necessary number of parking meters.<sup>29</sup>

On 15 March 2001, Jadewell wrote to the City Mayor in response to the mentioned Resolution, informing the said office that the former had started operation of the off-street parking on 2 December 2000 and of the on-street parking on 15 December 2000.<sup>30</sup> On 27 January 2001, Jadewell also wrote the City Treasurer that the former had completed installation of the parking meters.<sup>31</sup>

In response to the letter of Jadewell, the City Treasurer demanded the remittance of Baguio's share of the parking fees collected by Jadewell since it started operations. Jadewell responded by saying that it had complied with this obligation.<sup>32</sup>

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<sup>23</sup> *Rollo* (G.R. No. 172215), pp. 365-371.

<sup>24</sup> *Rollo* (G.R. No. 160025), p. 76.

<sup>25</sup> *Id.* at 2987. There were **100 designated parking spaces**.

<sup>26</sup> *Id.* at 2988.

<sup>27</sup> *Id.* at 2990.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 400.

<sup>30</sup> *Id.*

<sup>31</sup> *Rollo* (G.R. No. 164107), p. 218.

<sup>32</sup> *Rollo* (G.R. No. 172215), p. 401.

On 19 February 2002, the Sanggunian passed **Resolution 37**,<sup>33</sup> expressing its intent to rescind the MOA with Jadewell. The said Resolution enumerated in the “Whereas” clauses the alleged violations of Jadewell prompting it to rescind the MOA. It reads:

X X X X

WHEREAS, it now appears from **verified facts** that:

1. contrary to its commitment to install a technologically based P & D parking system, at no cost to the City, including “such equipment and paraphernalia to meter the length of usage of the affected parking spaces for purposes of payment of the parking fees”, Jadewell has installed only fourteen (14) parking meters (only 12 of which are working) in only three (3) streets, and Jadewell does not intend to install anymore [sic]; instead it has resorted as a rule to an exceptional circumstance of manual collection of parking fees by parking attendants who, despite express provisions of the Ordinance, are not duly deputized by the DOTC-LTO. Despite assurances to the Honorable City Mayor that Jadewell would stop collection of parking fees until the parking meters have been duly installed, Jadewell continues to collect parking fees manually by using undeputized parking attendants to do the collection;

2. contrary to its commitment to install a technologically based P & D parking system, at no cost to the City, Jadewell has charged the cost of such and similar equipment as direct costs, thus substantially eroding the share of the City in the parking fees;

3. contrary to its obligation to post a performance bond, Jadewell has not fully complied, and when required to update its performance bond Jadewell refused to do so rationalizing its non-compliance by the assertion that they are already performing and therefore are no longer obligated to post a performance bond;

4. contrary to its obligation to remit the share of the City within the first ten (10) days of the following month, Jadewell had initially resisted making payments to the City on the pretext that the profits cannot be determined until after the end of the fiscal year and initially failed to have their tickets pre-numbered and registered with the Office of the City Treasurer;

5. contrary to its promise that the City would derive substantial revenue from the on-street pay parking system, Jadewell has not paid a single centavo of the City share in on-street parking operation; whatever Jadewell has remitted to the City are properly chargeable against the share of the City in the MOA on off-street parking (the Burnham Parking Area near Ganza), and it appears less than what the City is entitled thereto; and

6. contrary to its representations that the P & D System which it proposed would eliminate fraud in the collection of parking fees, Jadewell has perpetrated fraud on the City by, according to the affidavit

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<sup>33</sup> *Rollo* (G.R. No. 160025), pp. 120-122.

of its former bookkeeper, Mr. Adonis Cabungan, doctoring the financial statements before the same are submitted to City authorities.<sup>34</sup>

WHEREAS, there has been no substantial improvement of the traffic situation in the City even with the introduction of the P & D Parking System and thus it increasingly appears that the system introduced by Jadewell is more for revenue raising than for regulatory purposes. As a consequence the legal principle applies that the collection of taxes cannot be let to any person. In other words, government cannot allow private persons to collect public funds for themselves with the agreement that part thereof or as it turned out in this case no part thereof is shared with the City;

WHEREAS, in its financial reports to the City showing substantial losses [sic] and in its statement to other persons that it is losing money on the project, the kindest thing that the City can do for Jadewell is to prevent Jadewell from incurring anymore [sic] losses.

NOW THEREFORE, on motion of Hon. Bautista, and Hon. Cariño, seconded by Hon. Yaranon, Hon. Weygan and Hon. Tabora, be it

RESOLVED, as it is hereby resolved, to rescind the Memorandum of Agreement (MOA) executed between the City of Baguio and Jadewell Parking System Corporation dated 26 June 2000 on the basis of the foregoing premises and exercising its rights under Section 12 of the MOA on the subject of On-Street Parking executed between the City of Baguio and Jadewell Parking Systems Corporation dated 26 June 2000 and, more importantly, performing its duty to protect and promote the general welfare of the people of Baguio City.

RESOLVED FURTHER, to direct the City Legal Officer to cause the proper notice of rescission to Jadewell Parking Systems Corporation forthwith and to take all appropriate steps to implement and enforce the intent of this Resolution.

RESOLVED FURTHERMORE, to inform all City officials and employees and all other persons concerned to be guided accordingly.<sup>35</sup>

On 1 March 2002, the then City Mayor of Baguio, Bernardo M. Vergara, vetoed **Resolution 37**, through a letter dated 1 March 2002 addressed to the Vice-Mayor, as Presiding Officer of the Sanggunian, and its members. Mayor Vergara reasoned that it was premature for the Sangguniang Panlungsod to rescind the MOA, because the latter provides for a minimum period of five years before the right of rescission can be

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<sup>34</sup> *Rollo* (G.R. No. 163052), pp. 376-377. The affidavit of Adonis Cabungan was appended to the 13 July 2003 Report of the COA-CAR. Mr. Cabungan stated in his affidavit that as bookkeeper of Jadewell, he noticed that the financial statements (FS) the company submitted to the local government of Baguio City were altered or changed. He detailed his observations on the altered FS as follows: a) the expenses reflected in the FS actually included the salary of Mr. Tan's personal housemaid and the rental for of his house in Bukaneg St., Baguio City; b) the FS for the months of April to August 2001 was padded by Jadewell by ₱300,000 that was reflected as salaries of its managers, office personnel and utility; and c) that the monthly depreciation of a motorcycle with side car was included despite its being not operational. He further stated that he was instructed by Mrs. Tan not to sign the monthly FS he submits to Jadewell and to send those by facsimile to their office in Manila.

<sup>35</sup> *Supra* note 33.

exercised; and, that the right of Jadewell to due process was violated due to the lack of opportunity to hear the latter's side. The City Mayor proposed a re-negotiation of the MOA with Jadewell as a solution to the problem.<sup>36</sup>

Meanwhile, on 13 March 2002, the DOTC–Cordillera Autonomous Region (DOTC-CAR) issued a cease and desist order to Jadewell prohibiting it from clamping down and/or towing away vehicles in Baguio City for violation of traffic rules and regulations.<sup>37</sup>

On 17 April 2002, the Sanggunian resolved through a Resolution of the same date, to override the veto of the City Mayor, worded thus:

NOW THEREFORE, the Sangguniang Panlungsod (City Council) in Regular Session assembled, by twelve affirmative votes constituting more that [sic] a two-thirds vote of all its Members, has resolved to override, as it hereby overrides, the veto of His Honor, Mayor Bernardo M. Vergara, of City Resolution Numbered 037, Series of 2002, entitled "*Rescinding the Memorandum of Agreement (MOA) Executed Between the City of Baguio and Jadewell Parking Systems Corporation Dated 26 June 2000.*"<sup>38</sup>

Also at this time, Braulio D. Yaranon, who was then a member of the Sanggunian, requested a special audit from the Commission on Audit–Cordillera Autonomous Region (COA-CAR) on the operations of Jadewell as regards the pay parking project embodied in the MOA.

On 27 May 2002, Jadewell filed with the RTC of Baguio City a Rule 65 Petition for Certiorari, Prohibition and Mandamus with Prayer for the Issuance of a Writ of Preliminary Injunction, assailing the validity of Resolution No. 037-2002, which rescinded the MOA between the Sangguniang Panlungsod and Jadewell.<sup>39</sup> The case was docketed as Civil Case No. 5285-R and was raffled off to RTC-Baguio (Branch 61).

On 8 October 2002, the RTC Br. 61 promulgated its Decision<sup>40</sup> finding the Sanggunian's rescission of the MOA unlawful. The Sanggunian then filed an appeal assailing the RTC's decision with the Court of Appeals; the case was docketed as **CA-G.R. SP No. 74756**.

Meanwhile, pending resolution of CA-G.R. SP No. 74756 before the CA, the Sanggunian passed **Resolution No. 089, Series of 2003**. The resolution sought the assistance of the DOTC-CAR specifically, for it to take immediate action against the officers and personnel of Jadewell for defying the 13 March 2002 cease-and-desist Order it issued prohibiting the latter

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<sup>36</sup> *Rollo* (G.R. No. 160025), p. 124.

<sup>37</sup> *Rollo* (G.R. No. 166094), p. 33.

<sup>38</sup> *Rollo* (G.R. No. 160025), p. 125.

<sup>39</sup> *Id.* at 74.

<sup>40</sup> *Id.* at 145-159.

from clamping down and/or towing away vehicles.<sup>41</sup> On 27 May 2003, City Mayor Vergara approved and signed Resolution No. 089-2003. In response, Jadewell filed a Petition for Indirect Contempt with the CA against Mayor Vergara, the Sanggunian and other local government officers. The case was docketed as **CA-G.R. SP No. 77341**. The original petition was followed by three (3) supplemental petitions filed by Jadewell in the same case.

On 7 July 2003, the CA rendered a Decision<sup>42</sup> in CA G.R. SP No. 74756, affirming the assailed Decision of the trial court which declared as invalid the Sanggunian's rescission of the MOA. The Sanggunian filed a Motion For Reconsideration, but this was denied by the CA through a Resolution dated 4 September 2003.<sup>43</sup> Aggrieved by the denial of their appeal, the Sanggunian filed a Rule 45 Petition for Review on Certiorari with this Court, seeking to reverse and set aside the 7 July 2003 Decision and its Resolution dated 04 September 2003 of the CA. The petition was docketed as **G.R. No. 160025**, the first of the consolidated petitions herein.<sup>44</sup>

In CA-G.R. SP No. 77341, the CA dismissed in a Decision<sup>45</sup> promulgated on 28 July 2004 the contempt petitions filed by Jadewell for lack of merit. The latter's Motion For Reconsideration was likewise denied by the CA.<sup>46</sup> Jadewell elevated the dismissal of its contempt petitions to this Court on 8 December 2004 by filing a Rule 45 Petition for Review on Certiorari. The case was docketed as **G.R. No. 166094**. This is not among the consolidated petitions herein.

On 13 July 2003, the COA-CAR promulgated the requested Report.<sup>47</sup> The Report's objective was to ascertain compliance by the contracting parties – the City of Baguio and Jadewell – with Ordinance No. 003-2000 and the MOA. The COA-CAR Report has 12 findings, essentially as follows:

- 1) The provisions of the MOA and its Supplement as regards the sharing of the fees are contradicting, hence the share of the City Government cannot be determined;<sup>48</sup>
- 2) There was no proper segregation by area of the parking fees collected, hence the proper share of Baguio City cannot be determined;<sup>49</sup>
- 3) The City Government did not strictly implement the collection of penalties arising from the late remittances of Jadewell, hence additional revenues were not collected;<sup>50</sup>

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<sup>41</sup> *Rollo* (G.R. No. 166094), p. 34.

<sup>42</sup> *Rollo* (G.R. No. 160025), p. 70.

<sup>43</sup> *Id.* at 83.

<sup>44</sup> *Id.* at 32.

<sup>45</sup> *Rollo* (G.R. No. 166094), p. 30.

<sup>46</sup> *Id.* at 49.

<sup>47</sup> *Rollo* (G.R. No. 163052), pp. 173 to 467.

<sup>48</sup> *Id.* at 182.

<sup>49</sup> *Id.* at 187.

<sup>50</sup> *Id.* at 191

- 4) The City Treasurer did not conduct an audit of the books and accounts of Jadewell, thus the City Government's share from parking fees cannot be ascertained;<sup>51</sup>
- 5) The use of the P&D parking meters were [sic] not maximized due to Jadewell's non-compliance with Ordinance No. 003-2000 and the MOA, resulting in the collection of meager income from its use;<sup>52</sup>
- 6) The MOA does not specify the guidelines for determining the economic viability of installing the parking meters and the period within which to install it [sic];<sup>53</sup>
- 7) The Supplemental MOA was not confirmed by the City Council of Baguio in violation of R.A. No. 7160 (the Local Government Code);<sup>54</sup>
- 8) The coverage of the parking operations contained in Annex "A" of the MOA was not confirmed by the City Council in violation of R.A. No. 7160;<sup>55</sup>
- 9) The City Government failed to ensure proper compliance by Jadewell with the MOA provisions;<sup>56</sup>
- 10) The pay parking project was awarded to a bidder who did not have all the qualifications as stated in the "*Invitation to Bid*" in violation of R.A. No. 7160 and Audit Circular No. 92-386;<sup>57</sup>
- 11) The provisions on deputization in Ordinance No. 003-2000 and the MOA are contrary to R.A. No. 4136 (the Land Transportation and Traffic Code), thus rendering it invalid;<sup>58</sup>
- 12) The monthly minimum amount to be remitted to the City Government is doubtful due to the discrepancy in the amounts collected and expenses for the year 1999 provided by the City Government to Jadewell as against the amount certified by the Office of the City Architect and Parks Superintendent-Burnham Parks Office for the City Government overseeing the Ganza-Burnham parking spaces.<sup>59</sup>

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<sup>51</sup> Id. at 196.

<sup>52</sup> Id. at 200.

<sup>53</sup> Id. at 203.

<sup>54</sup> Id. at 206.

<sup>55</sup> Id. at 208.

<sup>56</sup> Id. at 212.

<sup>57</sup> Id. at 217. The CAR-COA Report found that Jadewell lacked the 10-year experience in the pay parking business as specified in the "*Invitation to Bid*". Thus:

x x x x

Management awarded the pay parking project to a bidder whose performance on implementing a technologically-based parking system using the Schlumberger DG4s Pay & Display machines is not tested. Except for the Ganza parking area which employs a different machine, almost all collections from the other parking places were made manually.

The audit team issued an Audit Observation Memorandum (*Annex 54*), requesting for the minutes of the meeting of the Committee on Awards. This document could have revealed whether there was a prequalification of bidders as it was apparent that none of the bidders were qualified.

x x x x

<sup>58</sup> Id. at 220.

<sup>59</sup> Id. at 120.

On 11 February 2004, after G.R. No. 160025 was filed and pending resolution by this Court, the Sangguniang Panlungsod adopted **Resolution No. 056, Series of 2004**. The said Resolution informs the general public that Jadewell had neither the authority nor the police power to clamp, tow, or impound vehicles at any place in the City of Baguio.<sup>60</sup> Also, on the same date, the Sangguniang Panlungsod passed **Resolution No. 059, Series of 2004**, in which it made a formal demand upon Jadewell to restore to it possession of the Ganza Parking Area.<sup>61</sup>

With these developments, Jadewell filed directly with this Court its first indirect contempt case against Bernardo M. Vergara (then City Mayor of Baguio), its Vice-Mayor, and the entire City Council for enacting Resolution Nos. 056 & 059, Series of 2004 pending resolution by this Court of G.R. 160025. The case was docketed as **G.R. No. 163052**.

On 23 June 2004, this Court through its First Division, ordered G.R. No. 163052 consolidated with G.R. No. 160025.<sup>62</sup>

On 1 July 2004, then Baguio City Mayor Braulio D. Yaranon issued **Executive Order No. 001-04**,<sup>63</sup> the decretal portion of which reads:

NOW, THEREFORE, the undersigned City Mayor, pursuant to his authority to enforce all laws and ordinances relative to the governance of the City, and to issue executive orders for the faithful and appropriate enforcement and execution of such laws and ordinances (Sec. 455 (b) (2) and (iii), R.A. 7160) hereby affirms and gives protection to the right of the citizenry, particularly affected motor vehicle owners, operators, and drivers, to refuse to submit to the enforcement of Ordinance 003-2000, by the Jadewell Parking Systems Corporation, and further to refuse to pay public revenue in the form of fees, charges, impositions, fines, and penalties provided for in the said ordinance, to the said entity, such acts being patently illegal and prohibited by law; this Executive Order shall be in force and effect until the City Council, as the legislative arm of the City of Baguio, shall have adopted appropriate remedial or corrective measures on the matters and concerns specified hereinabove.

On 8 July 2004, Mayor Yaranon issued a Memorandum<sup>64</sup> to the City Director of the Baguio City Police Department, directing the department to stop and prevent Jadewell from clamping, towing, and impounding vehicles; to arrest and file criminal charges against Jadewell personnel who would execute the proscribed acts specified in the said Memorandum; and to confiscate the equipment used by Jadewell to clamp, tow, or impound vehicles under the authority of the rescinded MOA.

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<sup>60</sup> *Rollo* (G.R. No. 163052), p. 7.

<sup>61</sup> *Supra*.

<sup>62</sup> *Rollo* (G.R. No. 163052), p. 102.

<sup>63</sup> *Rollo* (G.R. No. 164107), p. 4.

<sup>64</sup> *Rollo* (G.R. No. 164107), pp. 25-26.

On 12 July 2004, Jadewell filed its second Petition for indirect contempt again with this Court, this time against Mayor Yaranon for having issued the above-cited Order also for the same reasons given in its first contempt petition with this Court. The Petition was docketed as **G.R. No. 164107**.

Furthermore, on 15 July 2004, Jadewell filed an administrative case against Mayor Yaranon before the Office of the President (OP). Docketed as **Case No. OP 04-G-294**, it sought the mayor's suspension and removal from office. The case against Mayor Yaranon was for his issuance of the following: (1) Executive Order No. 001-04 dated 1 July 2004; (2) the Memorandum dated 7 July 2004 limiting the pay parking business of Jadewell to certain parts of Baguio City; and (3) Memorandum dated 8 July 2004 directing the Baguio City Police Department to prevent Jadewell from apprehending, towing and impounding vehicles. A supplemental petition filed by Jadewell on 19 January 2005, complaining of Executive Order No. 005-2004, which was issued on 15 October 2004, was also included in administrative case OP 04-G-294.

On the following day, 16 July 2004, Jadewell filed a Supplemental Petition with Motion for Leave of this Court<sup>65</sup> in the second contempt petition before this Court, **G.R. No. 164107**, alleging as a supplemental fact, Mayor Yaranon's Memorandum of 08 July 2004.

On 15 October 2004, Mayor Yaranon issued **Executive Order No. 005-2004**.<sup>66</sup> This was a cease and desist order against Jadewell to prevent it from performing the following acts: (1) charging and collecting from motorists, parking fees without their consent;<sup>67</sup> (2) seizing and detaining vehicles of motorists who refuse to pay parking fees to Jadewell;<sup>68</sup> and (3) using yellow-colored heavy wreckers or tow trucks bearing the name "City of Baguio".<sup>69</sup>

In addition to Executive Order No. 005-2004, Mayor Yaranon issued **Executive Order No. 005-2004-A**, which is essentially a rehash of Executive Order No. 005-2004.<sup>70</sup>

On 25 October 2004, Jadewell filed a third Petition with this Court, praying that Mayor Yaranon be cited for contempt and that Executive Order No. 005-2004 be nullified.<sup>71</sup> This case was docketed as **G.R. No. 165564**. On 16 November 2004, Jadewell filed a Supplemental Petition to this

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<sup>65</sup> Id. at 18.

<sup>66</sup> *Rollo* (G.R. No. 165564), pp. 14-16

<sup>67</sup> Id. at 6.

<sup>68</sup> Id. at 7.

<sup>69</sup> Id.

<sup>70</sup> Id. at 20.

<sup>71</sup> Id. at 11.



Petition alleging as a supplemental ground the issuance of Executive Order No. 005-2004-A.<sup>72</sup>

On 20 December 2004, Mayor Yaranon issued *Administrative Order No. 622, Series of 2004*, which declared that Jadewell exceeded its area of operations for the administration of on-street parking and was thus required to show lawful cause why its business permit should not be revoked. In response to this Order, Jadewell filed a Second Supplemental Petition for contempt against Mayor Yaranon in G.R. No. 165564 on 25 January 2005.

On 10 January 2005, this Court through a Resolution<sup>73</sup> ordered the **consolidation** of **G.R. No. 160025** with **G.R. Nos. 163052, 164107, and 165564**.

On 17 January 2005, this Court denied Jadewell's petition in G.R. No. 166094 for failure to show any reversible error on the part of the CA in dismissing its petition for contempt in CA-G.R. SP No. 77341.<sup>74</sup> Its Motion For Reconsideration was likewise denied with finality.<sup>75</sup>

In the beginning of the year 2005, Jadewell attempted to renew its business permit from the City of Baguio and tendered the fees required. However, the Office of the City Mayor refused to renew the business permit and returned the amount tendered.<sup>76</sup> Because of these actions of Mayor Yaranon, Jadewell filed on 15 April 2005 its Third Supplemental Petition in **G.R. No. 164107**, which had been consolidated with **G.R. Nos. 160025, 163052, and 165564**. Aside from its main prayer to cite the mayor for contempt, Jadewell also prayed that Mayor Yaranon, a lawyer, be disbarred.<sup>77</sup> On 25 April 2005, this Court, through its Third Division, admitted the Third Supplemental Petition of Jadewell.<sup>78</sup>

On 9 February 2005, this Court, in **G.R. No. 160025**, issued a Writ of preliminary mandatory injunction ordering Mayor Yaranon to immediately reopen the streets and premises occupied and/or operated by Jadewell. The Court also required Jadewell to post a cash or surety bond in the amount of ₱100,000 within five days from receipt of the order.<sup>79</sup>

The order, in part, reads:

Acting on the urgent motion dated January 26, 2005 of respondent Jadewell Parking Systems Corporation for the issuance of a temporary mandatory/preventive order and/or for writ of preliminary

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<sup>72</sup> Id. at 28.

<sup>73</sup> Id. at 165.

<sup>74</sup> *Rollo* (G.R. No. 166094), p. 56.

<sup>75</sup> Id. at 65.

<sup>76</sup> *Rollo* (G.R. No. 164107), pp. 319-320.

<sup>77</sup> Id. at 323.

<sup>78</sup> Id. at 341.

<sup>79</sup> *Rollo* (G.R. No. 160025), pp. 460-461.

mandatory/prohibitory injunction pending appeal in **G.R. No. 160025**, alleging that the effects of the acts of City Mayor Yaranon, unless stayed, would also make effective what the petitioner Sangguniang Panglungsod ng Baguio failed to obtain in the instant case, the net effect of which would not only be grave damage and injury to the respondent but also to the City of Baguio, the Court further Resolved:

- (a) to **ISSUE**, the **WRIT OF PRELIMINARY MANDATORY INJUNCTION** prayed for, effective immediately, commanding City Mayor Yaranon to immediately reopen the streets and/or premises operated and/or occupied by the respondent and to let them remain open, until further orders of this Court; and
- (b) to require petitioner to **POST** a **CASH BOND** or a **SURETY BOND** from a reputable bonding company of indubitable solvency in the amount of **ONE HUNDRED THOUSAND PESOS (P100,000.00)**, with terms and conditions to be approved by the Court, within five (5) days from notice, otherwise, the writ of preliminary mandatory injunction herein issued shall **AUTOMATICALLY** be lifted.

**NOW THEREFORE**, You, [City Mayor **Braulio D. Yaranon**], your agents, representatives and/or any person or persons acting upon your orders or in your place or stead, are hereby **DIRECTED** to **IMMEDIATELY REOPEN** the streets and/or premises operated and/or occupied by the respondents and to let the said streets and premises remain **OPEN**, until further orders from this Court.

On 8 April 2005, Mayor Yaranon issued a Memorandum<sup>80</sup> directing Col. Isagani Nerez, Director of the Baguio City Police District, to create a special task force to stop Jadewell from clamping, towing, and impounding vehicles in violation of parking rules in Baguio City; to impound the wrecker/tow trucks used by Jadewell.

On 20 April 2005, this Court promulgated a Resolution in **G.R. No. 160025**, finding Mayor Yaranon guilty of direct and indirect contempt. He was cited for direct contempt when it was proven that he had submitted pleadings before this Court containing falsehoods. Mayor Yaranon had stated in his Compliance that the streets were opened for Jadewell to resume operations, but upon inspection these were found to be closed.<sup>81</sup> He was also cited for indirect contempt, for having continuously refused to carry out the writ issued by this Court to reopen the streets so Jadewell could resume operations.<sup>82</sup> This Court likewise fined Mayor Yaranon the amount of ₱10,000, which he paid. The Court further ordered the National Bureau of Investigation (NBI) to immediately arrest and detain Mayor Yaranon pending his compliance with the 9 February 2005 writ of preliminary

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<sup>80</sup> *Rollo* (G.R. No. 164107), p. 332.

<sup>81</sup> *Id.* at 333-340.

<sup>82</sup> *Id.* at 339.

mandatory injunction issued by this Court, which ordered the reopening of some streets so Jadewell could continue its operations.<sup>83</sup>

On 10 August 2005, Benedicto Balajadia, *et al.* filed **Civil Case No. 6089-R** against Jadewell before the RTC–Baguio City. The case was subsequently raffled to Branch 3 of the RTC presided by Judge Fernando Vil Pamintuan.<sup>84</sup> Balajadia, *et al.* sought to nullify the MOA between Jadewell and the City Government of Baguio and its enabling ordinance, Ordinance No. 003-2000. The complainants also prayed for the issuance of a Temporary Restraining Order (TRO) and for a writ of preliminary injunction against Jadewell.

On 19 April 2006, Judge Pamintuan issued an Order in Civil Case No. 6089-R granting the prayer of complainants Balajadia *et al.* for the issuance of a Writ of Preliminary Prohibitory Injunction. The injunction was meant to restrain Jadewell from proceeding with the supervision and collection of parking, towing, and impounding fees on the streets of Baguio City. Further, Judge Pamintuan ordered the holding in abeyance of the implementation of City Ordinance No. 003-2000 and the MOA.<sup>85</sup>

On 27 April 2006, Jadewell filed with this Court a Rule 65 Petition for Certiorari, Prohibition, and Mandamus against Judge Pamintuan<sup>86</sup> for refusing to dismiss Civil Case No. 6089-R. The case was docketed as **G.R. No. 172215**. On the same day, Jadewell filed a Petition asking this Court to cite Judge Pamintuan for contempt. This fourth contempt case, albeit primarily against a member of the judiciary, was docketed as **G.R. No. 172216**.

On 19 June 2006, G.R. No. **172215** was ordered consolidated with G.R. Nos. **160025**, **163052**, **164107**, and **165564**.<sup>87</sup>

On 23 June 2006, Mayor Yaranon wrote Jadewell a letter demanding that it desist from operating the pay parking system in Baguio City. Simultaneously, he wrote the Sanggunian, requesting it to cancel Ordinance No. 003-2000, the enabling ordinance for the MOA.

On 26 June 2006, Jadewell filed a Supplemental Petition<sup>88</sup> in **G.R. No. 172215** complaining of Judge Pamintuan's issuance of the following Orders in **Civil Case No. 6089-R**: (a) Order dated 24 April 2006<sup>89</sup> directing the parties to file a pre-trial brief and setting the pre-trial of the case; (b)

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<sup>83</sup> *Rollo* (G.R. No. 160025), p. 602.

<sup>84</sup> *Rollo* (G.R. No. 172215), p. 111.

<sup>85</sup> *Id.* at 53-56.

<sup>86</sup> Presiding Judge of Branch 3, Regional Trial Court of Baguio City.

<sup>87</sup> *Rollo* (G.R. No. 160025), p. 697.

<sup>88</sup> *Rollo* (G.R. No. 172215), p. 593.

<sup>89</sup> *Id.* at 610.

Order dated 01 June 2006<sup>90</sup> informing Jadewell that public respondent was not suspending the proceedings, because he believed he was not covered by the writ issued by this Court; (c) Order dated 14 June 2006<sup>91</sup> upholding the writ he issued in the civil case despite his receipt of a copy of the writ of preliminary injunction issued by this Court; and (d) Order dated 16 June 2006<sup>92</sup> directing Jadewell to comply with the writ of preliminary prohibitory injunction under pain of direct contempt.

On the same day, 26 June 2006, the Office of the President (OP) rendered a Decision in **OP 04-G-294**, the administrative case Jadewell had filed against Mayor Yaranon, finding him guilty of grave misconduct, abuse of authority, and oppression. Mayor Yaranon was meted out a penalty totalling 12 months suspension from office.<sup>93</sup> This suspension was implemented by the Department of Interior and Local Government (DILG). Aggrieved by his suspension, Mayor Yaranon filed his Motion For Reconsideration, which was denied on 22 August 2006 by the OP.

On 29 June 2006, in response to Mayor Yaranon's letters of 23 June 2006, Jadewell filed before this Court yet another case for contempt – its fifth contempt case, and the third one specifically against Mayor Yaranon. In addition to its prayer to cite the mayor for contempt, Jadewell also prayed that Mayor Yaranon, a lawyer, be disbarred.<sup>94</sup> The case was docketed as **G.R. No. 173043**.

On 31 July 2006, G.R. No. **173043** was ordered consolidated with G.R. Nos. **160025**, **163052**, **164107**, **165564**, and **172215**.<sup>95</sup> On 27 September 2006, G.R. No. **172216** was consolidated with G.R. Nos. **160025**, **163052**, **164107**, **165564**.<sup>96</sup>

On 23 August 2006, while the consolidated cases were pending resolution before this Court, the Sangguniang Panlungsod enacted **Resolution No. 204, Series of 2006**. The Resolution directed the City Legal Officer to notify Jadewell of the Baguio City Government's intention to rescind the MOA, and to inform Jadewell to stop its operations under the MOA 60 days after receipt of the Notice.<sup>97</sup>

On 28 August 2006, the legal counsel for Jadewell wrote to Baguio City Vice-Mayor Bautista, Jr., informing him that the OP had denied the Motion for Reconsideration of Mayor Yaranon assailing the OP resolution ordering the latter's suspension as City Mayor of Baguio City.<sup>98</sup> The counsel

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<sup>90</sup> Id. at 611-615.

<sup>91</sup> Id. at 16.

<sup>92</sup> Id. at 217.

<sup>93</sup> *Rollo*, (G.R. No. 181488), p. 166.

<sup>94</sup> *Rollo* (G.R. No. 173043), p.10.

<sup>95</sup> Id. at 102.

<sup>96</sup> *Rollo* (G.R. No. 172216), p. 273.

<sup>97</sup> Id. at 21.

<sup>98</sup> *Rollo* (G.R. No. 174879), p. 24.

for Jadewell likewise stated in his letter that they were aware that the Sanggunian was planning to issue a resolution to repeal Ordinance No. 003-2000 and rescind the MOA. The letter requested the Vice-Mayor to veto the measure in light of the pending petitions with the Supreme Court.<sup>99</sup> The said counsel likewise sent a similar letter to the Sanggunian, urging it to desist from implementing the repeal of Ordinance No. 003-2000 and the rescission of the MOA pending the resolution of the cases with the Supreme Court.<sup>100</sup>

On 13 September 2006, Mayor Yaranon appealed to the CA, in a case docketed as **CA G.R. CV SP No. 96116**, praying for the lifting of the penalty of suspension meted him in **OP 04-G-294**, but this appeal was denied. Mayor Yaranon moved for reconsideration.<sup>101</sup>

On 22 September 2006, City Legal Officer Rabanes wrote a letter to Jadewell, through its President, Mr. Rogelio Tan, informing Jadewell of **Resolution No. 204, Series of 2006**, which rescinded the MOA, and ordering it to stop operations within 60 days from notice.<sup>102</sup> This letter was received on the same day it was issued;<sup>103</sup> hence, the 60-day period lapsed on 22 November 2006. **This notice, together with the resolution, constitute the second act of rescission of the MOA by the city officials of Baguio.**

On 19 October 2006, Jadewell filed the sixth contempt case with this Court against the acting City Mayor of Baguio, Reinaldo A. Bautista, Jr., and the members of the Sanggunian, including City Legal Officer Melchor Carlos R. Rabanes, for the second act of rescission of the MOA.<sup>104</sup> The case was docketed as **G.R. No. 174879**.

On 9 October 2007, the CA dismissed Mayor Yaranon's Petition in **CA G.R. CV SP No. 96116** on the ground that it had become moot and academic due to Mayor Yaranon's failure to be re-elected in the 17 May 2007 elections. Mayor Yaranon filed a Motion for Reconsideration on 07 November 2007, but this was also denied by the CA on 24 January 2008. Thus, on 17 March 2008, Mayor Yaranon filed a Rule 45 Petition before this Court seeking to reverse and set aside the CA Decision and Resolution. It was docketed as **G.R. No. 181488**.

On 12 November 2008, G.R. No. 181488 was ordered consolidated with the cases already mentioned.<sup>105</sup>

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<sup>99</sup> Id.

<sup>100</sup> Id. at 25.

<sup>101</sup> *Rollo* (G.R. No. 181488), p. 19.

<sup>102</sup> *Rollo* (G.R. No. 174879), p. 23.

<sup>103</sup> Id.

<sup>104</sup> Id. at pp. 13-19.

<sup>105</sup> *Rollo* (G.R. No. 181488), p. 454.

## THE ISSUES

### ***1. On G.R. No. 160025 and on the claim in G.R. No. 174879 that the second act of rescission was a valid act of rescission.***

Whilst the issues are spread out among the nine cases, we have grouped these according to what are common to the specific cases.

In our effort to simplify the issues and provide forms of relief to the parties that are not purely academic, it is necessary to examine the operative effects that may result from any resolution of this Court. Such examination may also help guide the parties in their future actions, and perhaps the overly-litigated matters brought before us in the consolidated petitions may finally be put to rest.

We note at the outset that on 22 November 2006, 60 days had lapsed from receipt of the letter dated 22 September 2006, informing Jadewell of the decision of the City of Baguio to rescind the MOA under Section 12 thereof. It may be recalled that Section 12 requires that notice of the intention to rescind be given 60 days prior to the effectivity of the rescission. Jadewell has not questioned the legal efficacy of this notice. It has brought this matter of a second rescission to the Court's attention only as a matter of contumacious behavior on the part of the respondents in G.R. No. 174879, in the same way that it brought various actions of the public respondents before the Court in its other contempt petitions. Since the legal efficacy of the rescission in 2006 has not been contested by Jadewell in any of the petitions before us, **we thus consider this notice of rescission to have taken legal effect and therefore, at the latest, the MOA between the City of Baguio and Jadewell has ceased to legally exist as of 22 November 2006.**

Parenthetically, we note that while the validity of the second act of rescission described in G.R. No. 174879 is not principally determinative of the respondents' liability for indirect contempt therein, a conclusion that the second act of rescission was undertaken competently and appropriately will to a certain degree impact our appreciation of such possible liability. We will discuss this issue in our subsequent discussion on the charges of contempt.

**Inasmuch as there is no longer any existing MOA, no order of this Court can have the effect of directing the City of Baguio to enforce any of the terms of the MOA, which brings us to the matter of G.R. No. 160025. In whatever direction we rule on the question of the validity of the first act of rescission, such ruling will only have the effect of either providing Jadewell a basis to seek damages from the City of Baguio for**

**the wrongful termination of the MOA, should we find wrongful termination to have taken place, or, deny Jadewell that right.** The possible susceptibility of the City of Baguio and its officials to an action for damages on a finding of wrongful termination is why we do not consider G.R. No. 160025 as having been rendered moot by the lawful rescission of the MOA on 22 November 2006. Thus, we will proceed to rule on the issues in G.R. No. 160025.

The *fallo* of the RTC Decision upheld by the CA, which affirmance is the *lis mota* in G.R. No. 160025, reads as follows:

**WHEREFORE**, judgment is rendered declaring both Sangguniang Panlungsod Resolution No. 037, Series of 2002 and the April 17, 2002 Resolution overriding the Mayor's veto as **NULL** and **VOID**. The Writ of Preliminary Injunction earlier issued by this Court is made **PERMANENT**, with costs against respondents.<sup>106</sup>

The RTC did not order the respondents therein to comply with the MOA. An order to perform a contract is not necessarily subsumed in an order not to terminate the same.

Contrast this legal point with the fact that the prayer of Jadewell in its original petition asked the RTC, in relevant part:

...that the writ of preliminary injunction be made permanent and the writs applied for be issued against the respondents nullifying and voiding Resolution No. 037, series of 2002 and the resolution over-riding the veto ... and instead, **directing them to perform what the memorandum of agreement requires them to do.** (Emphasis supplied)<sup>107</sup>

This latter part, which is effectively a prayer for a permanent mandatory injunction against respondents therein to perform the terms of the MOA, are not in the *fallo* of the RTC decision. We consider therefore that the RTC deliberately withheld granting the specific prayer to order Baguio City to perform the MOA. No motion to correct or clarify the said *fallo* having been filed by Jadewell, the prayer to order the city officials of Baguio to perform the MOA is hereby deemed abandoned.

We further note three things:

1. Jadewell has not questioned - in its Petition, Reply to Comment, and Memorandum before this Court - the implication of the RTC and CA Decisions to the effect that the Sanggunian had the authority to perform acts of contractual

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<sup>106</sup> CA *rollo*, Annex "E" RTC, Civil Case No. 5285-R, p. 15.

<sup>107</sup> Id., Annex "C" RTC Civil Case No. 5285-R, id.

rescission on behalf of the City of Baguio when both these courts ignored the issue raised by Jadewell in its Petition before the RTC, and we therefore do not consider this to be a genuine issue in this Petition before us;

2. While the Sangguniang Panlungsod has insinuated that there was fraud and excess of authority on the part of the mayor in the execution<sup>108</sup> of the MOA - because the latter provided for a smaller sharing of “20 % from the **gross profit** of the operation or 50% of the net profit whichever is higher” instead of the intended “20% of **gross receipts**,”<sup>109</sup> - petitioners in G.R. No. 160025 conceded even at the RTC level that they are not assailing the MOA for being defective but for having been breached in the performance. We thus disregard all arguments in G.R. No. 160025 regarding the validity of the execution of the MOA, for being a non-issue in this case,<sup>110</sup>

3. We also immediately set aside claims of Jadewell in its Petition before the RTC that an alternative relief should be provided by the courts in the form of compensation for terminated Build-Operate-Transfer (BOT) contracts under the BOT Law (Republic Act No. 6957) as there is not the slightest basis on record that the administration of on-street parking can be classified as an infrastructure contract, a basic element that must be present for any contract to come within the terms of the BOT Law.

Having preliminarily screened out the non-issues in this case, we proceed to examine the rulings of the courts *a quo* in G.R. 160025.

The CA affirmed the RTC Decision *in toto*, along the following points:

1. On the sole procedural issue. - The RTC was correct in treating the Petition as one for permanent injunction with a prayer for a preliminary injunction, instead of treating it by its formal title: “Petition for Certiorari, Prohibition and Mandamus with a Prayer for a Writ of Preliminary Injunction.” It was correct in holding that if the Petition had been treated by its formal denomination, then it would have been dismissed for failing to satisfy the requirement that the act sought to be

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<sup>108</sup> By “execution” is meant the signing of the Memorandum of Agreement, not its implementation.

<sup>109</sup> This claim of the Sanggunian is doubtful, the terms of the Ordinance Number 003, series of 2000, clearly provide for 20% of gross profit not gross receipts, as claimed by the Sanggunian in its various pleadings. See *Rollo* (G.R. No. 160025), pp. 106, 116.

<sup>110</sup> We will however tangentially deal with this issue when we discuss G.R. No. 172215.



nullified was rendered in a judicial or quasi-judicial capacity by the respondents, but then this formal denomination could be disregarded and the nature of the Petition should be determined by its allegations and prayers. Since there was a prayer to permanently enjoin respondents from enforcing the questioned resolutions, the RTC was correct in treating it as one for permanent injunction.

2. On the substantive issues:

a. On the lack of due process afforded Jadewell. – The RTC was correct in ruling that Jadewell was denied the right to be heard before the Sanggunian rescinded the MOA. There is no evidence on record that the Sanggunian afforded Jadewell an opportunity to present its side or refute the charges of the latter's violation committed under the MOA.<sup>111</sup>

b. On the authority of the RTC to consider the effect of Section 9 of the MOA<sup>112</sup> when Jadewell never raised the matter of Section 9 in any of its pleadings. – The RTC correctly considered Jadewell's letter dated 24 November 2001, addressed to the Sanggunian and offered during the trial, which introduced the subject matter of the five (5) year guarantee against rescission provided in Section 9 of the MOA. The CA regarded the RTC's consideration of said letter as judicious and added that even without it, the MOA, and its provisions, form part of the case records.<sup>113</sup>

c. On the failure to observe the 60-day notice requirement. – The RTC correctly found that the Sanggunian cannot validly and unilaterally rescind the MOA without observing the provisions in Section 12 of the MOA requiring that a 60-day notice be given before rescission can take place. To allow the Sanggunian to unilaterally rescind the MOA without giving Jadewell an opportunity to present its side is to render the right to rescission provided in the MOA legally vulnerable.<sup>114</sup>

d. On the lack of substantiveness of the alleged breach of performance of the MOA by Jadewell. – The CA reviewed the records of the case and upheld the findings of the

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<sup>111</sup> CA *rollo*, p. 149.

<sup>112</sup> *Rollo* (G.R. No. 160025), p. 117; "9. Minimum Guaranty – The FIRST PARTY guaranties a minimum period of five (5) years against rescission; provided that after such period, the parties may agree to increase to a reasonable rate the parking fees and the share of the city from the parking fees collected as provided for in the guidelines, (Annex "B").

<sup>113</sup> *Id.* at 152-153.

<sup>114</sup> *Id.*

RTC that the violations of Jadewell were not substantial to merit the consequence of rescission under the MOA.<sup>115</sup>

We elucidate on the arguments of the parties, the RTC, and the CA.

In its Petition before the RTC, Jadewell argues that the rescission of the MOA was not valid, on due process grounds, and also because there was no substantial breach on its part to justify a rescission of the MOA.<sup>116</sup> It also asserts that the Sanggunian had no authority to rescind the MOA, because the latter was not a party thereto.<sup>117</sup>

Jadewell sought a writ of preliminary injunction to prevent the implementation of the questioned Resolution, and prayed that after hearing, the preliminary injunction be made permanent. It further prayed for the issuance of a writ of certiorari to nullify the assailed Resolution; and for a mandatory injunction to compel the City Government to perform the latter's obligations under the MOA.<sup>118</sup> Jadewell alternatively invoked the provisions of Section 18 of the Implementing Rules and Regulations (IRR) of the BOT Law,<sup>119</sup> in the event the RTC would uphold the validity of the questioned Resolution.

The trial court ruled that the rescission violated the due process clause of the Constitution and failed to meet the requirements for rescission under the Civil Code and the MOA itself. In the Sanggunian's Memorandum, on appeal before the CA, the Sanggunian assigned three errors to the Decision of the trial court: (1) the RTC ignored the evidence on record and the requirements of Rule 65 when it declared the subject Resolution void; (2) Jadewell was not denied due process when the MOA was rescinded; and (3) by ruling that the Sangguniang Panlungsod had no right of rescission for the first 5 years of the MOA – an issue not raised in the pleadings – the trial court improperly took up the cudgels for Jadewell in the case.<sup>120</sup>

As earlier stated, the CA upheld the RTC's Decision *in toto*.

The Sanggunian filed its Motion for Reconsideration arguing that the CA had erred as follows: (1) treating Jadewell's petition as an original action for injunction;<sup>121</sup> (2) ruling that Jadewell was deprived of due process<sup>122</sup> when it rescinded the MOA; and (3) finding that the MOA stipulated for a

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<sup>115</sup> Id. at 151.

<sup>116</sup> *Rollo* (G.R. No. 160025), pp. 91-92.

<sup>117</sup> Id. at 96.

<sup>118</sup> Id. at 99.

<sup>119</sup> Jadewell invokes the cited provision as an alternative prayer in its original action before the trial court. The provision cited mandates the local government unit to compensate the project proponent in the event that the project is revoked, cancelled or terminated.

<sup>120</sup> *CA rollo*, pp.88-89.

<sup>121</sup> Id. at 155.

<sup>122</sup> Id. at 156.

five-year minimum guarantee against rescission.<sup>123</sup> This was denied, and this denial and the CA Decision are the subjects of G. R. 160025.

**2. G.R. No. 172215 – Certiorari, Prohibition and Mandamus, filed by Jadewell against Judge Pamintuan for not dismissing Civil Case No. 6089-R**

Jadewell directly filed the instant Rule 65 Petition for Certiorari before this Court to nullify the denial by the trial court of its Motion to Dismiss and its Motion for Reconsideration of the same order,<sup>124</sup> and for ordering Jadewell to cease collecting parking fees, and from towing and impounding vehicles on the streets of Baguio City. It also seeks to nullify the proceedings in Civil Case No. 6089-R, invoking both *res judicata* and *litis pendentia*.<sup>125</sup> It contends that, since the issue on the validity of the questioned city ordinance and the MOA was favorably ruled upon previously by RTC Branches 7 and 61 of Baguio City in separate cases, Branch 3 of the same RTC presided by Judge Pamintuan is bound by the rulings of the other branches.<sup>126</sup> *Litis pendentia* is being invoked in relation to the petitions already before this Court.

Mayor Yaranon is impleaded in this case on the basis of the order of Judge Pamintuan to the city mayor to perform his duty to supervise the roads, streets and park of Baguio City, in coordination with the police and the LTO during the validity of the Writ of Injunction that Judge Pamintuan issued.<sup>127</sup>

The main issue to be resolved in Jadewell's Petition for certiorari is whether Judge Pamintuan's rulings in Civil Case No. 6089-R violated the *res judicata/litis pendentia* doctrines.

**3. G.R. No. 181488 – The Certiorari petition filed by Yaranon seeking to reverse Resolutions dated 9 October 2008 and 24 January 2008 in CA-G.R. SP No. 96116 which upheld the validity of his suspension as City Mayor of Baguio.**

Mayor Yaranon's instant Petition before this Court raises the following issues: (1) that his failed re-election bid was not a supervening

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<sup>123</sup> Id. at 169-170.

<sup>124</sup> *Rollo* (G.R. No. 172215), pp. 8-9.

<sup>125</sup> Id. at 28 -30.

<sup>126</sup> Id. at 27.

<sup>127</sup> Id. at 10.

event in the final determination by the CA of whether he was guilty of grave misconduct, abuse of authority, and oppression; and (2) that the CA should rule on the substantive validity of his suspension.

#### **4. *The Petitions for Contempt***

**a. G.R. No. 163052** – This is the first contempt petition filed by Jadewell directly with this Court against City Mayor Vergara, the Vice Mayor, and the entire Sanggunian, for enacting Resolution Nos. 056 & 059, Series of 2004. To recall, Resolution No. 056, Series of 2004 informs the general public that Jadewell had neither the authority nor the police power to clamp, tow or impound vehicles at any place in the City of Baguio.<sup>128</sup> In Resolution No. 059, Series of 2004, the City of Baguio made a formal demand upon Jadewell to surrender the Ganza and Burnham Park Parking Areas within thirty days. In the same Resolution, the City of Baguio also directed the City Legal Officer to file the appropriate legal actions necessary to recover the said parking areas and to ask for damages against Jadewell.<sup>129</sup>

The core issue to be resolved in this case is whether the Sanggunian Panlungsod is guilty of indirect contempt for enacting the above resolutions, pending resolution of G.R. No. 160025.

**b. G.R. No. 164107** – This contempt petition was filed directly with this Court against then Baguio City Mayor Braulio D. Yaranon after he issued Executive Order No. 001-04 announcing that, as City Mayor, he would give protection to motor vehicle owners, operators, and drivers who would refuse to submit to the enforcement of traffic rules by Jadewell such as by refusing to pay the parking fees or fines the latter imposes.

Yaranon also issued a Memorandum dated 8 July 2004, ordering the arrest and filing of criminal charges against Jadewell personnel who would clamp, tow, or impound motor vehicles in defiance of Executive Order No. 001-04. This was followed by a Memorandum on 8 April 2005 directing the Baguio City Police District to create a special task force to prevent Jadewell from clamping, towing, and impounding vehicles found to be in violation of the parking rules in Baguio City.

The issue to be resolved in this petition is whether Mayor Yaranon could be cited for contempt for the above, pending resolution of the issue of the validity of the rescission of the MOA in G.R. Nos. 160025 and 163052.

**c. G.R. No. 165564** – Jadewell filed this third contempt petition against Mayor Yaranon for issuing Executive Order No. 005-2004 dated 15 October 2004. The order directs Jadewell to cease and desist from: (a)

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<sup>128</sup> *Rollo* (G.R. no. 163052), p. 7.

<sup>129</sup> *Id.* at 66.

charging and collecting parking fees on the streets of Baguio City without the consent of the City Government;<sup>130</sup> (b) seizing and detaining vehicles of motorists who refuse to pay the parking fees to Jadewell<sup>131</sup> and (c) using yellow-colored tow trucks bearing the name “City of Baguio”.<sup>132</sup> Jadewell’s petition also seeks to nullify Executive Order No. 005-2004.

On 16 November 2004, Jadewell filed a Supplemental Petition. The act complained of this time was the issuance of Executive Order No. 005-2004-A which is a mere rehash of Executive Order No. 005-2004.<sup>133</sup> On 25 January 2005, Jadewell filed a Second Supplemental Petition in connection with Mayor Yaranon’s issuance of Administrative Order No. 622, Series of 2004. The said administrative order declared that Jadewell exceeded its area of operations for the administration of on-street parking and it required to show lawful cause why its business permit should not be revoked.

Like in the earlier contempt petitions, Jadewell alleges that these issuances by Mayor Yaranon are contumacious because they were made while the main petition, G.R. No. 160025 questioning the rescission of the MOA by the Sanggunian, is still pending resolution with this Court.

**d. G.R. No. 172216** – On 27 April 2006, Jadewell filed a petition for contempt against Judge Fernando Vil Pamintuan, Presiding Judge of RTC-Branch 3 of Baguio City, in relation to Civil Case No. 6089-R pending before his *sala*.<sup>134</sup> In the said civil case, Judge Pamintuan issued an Order directing Jadewell to desist from the collection of parking fees, from towing and impounding vehicles on the streets of Baguio City and to hold in abeyance the implementation of City Ordinance 003-2000 and the MOA. The validity of the Order of Judge Pamintuan is the subject of a Petition for Certiorari, Prohibition, and Mandamus instituted by Jadewell in G.R. No. 172215.

The main issue to be resolved in this case is whether Judge Pamintuan should be cited for indirect contempt by this Court for issuing the assailed Orders.

**e. G.R. No. 173043** – On 29 June 2006, Jadewell filed yet another contempt case against Mayor Yaranon. In addition to its prayer to cite him for contempt, Jadewell also prays that Mayor Yaranon, as a lawyer, be disbarred.<sup>135</sup> Jadewell instituted this fifth contempt case after it received a letter from Mayor Yaranon demanding that it stop its business operations in Baguio City, at the same time directing the Sangguniang Panlungsod to cancel Ordinance 003-2000.

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<sup>130</sup> *Rollo* (G.R. No. 165564), p. 6.

<sup>131</sup> *Id.* at 7.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 20.

<sup>134</sup> *Rollo* (G.R. No. 172216), p. 5.

<sup>135</sup> *Rollo*, (G.R. No. 173043), pp. 3, 10.

The issue to be resolved in this case is whether Mayor Yaranon was guilty of indirect contempt and professional misconduct for the above acts pending resolution of G.R. Nos. 160025, 163052, 164107, 165564 and 172215.<sup>136</sup>

**f. G.R. No. 174879** - On 19 October 2006, Jadewell filed a contempt case against the acting City Mayor of Baguio, Reinaldo A. Bautista, Jr., and the members of the Sangguniang Panlungsod, including City Legal Officer Melchor Carlos R. Rabanes, in connection with the second act of rescission.<sup>137</sup> Jadewell also asks that the respondents who are lawyers, namely: Rocky Thomas A. Balisong, Edilberto B. Tenefrancia, Faustino A. Olowan, Federico J. Mandapat, Perlita L. Chan-Rondez, and Jose M. Molintas, be disbarred.

These acts, in Jadewell's view, are contumacious in light of the pending G.R. No. 160025 before this Court.

### OUR RULINGS

#### 1. *On G.R. No. 160025*

##### *a. On the Treatment of Jadewell's Petition as one for Permanent Injunction.*

The CA sustained the position of the Sanggunian that certiorari could not prosper because when the latter enacted Resolution 37, the Sanggunian was exercising its legislative function and not its judicial or quasi-judicial function. The writ of certiorari under Rule 65 requires: (a) that it is directed against a tribunal, a board or an officer exercising judicial or quasi-judicial functions; (b) that such tribunal, board, or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.<sup>138</sup>

The CA nevertheless proceeded to treat the Petition as an original action for injunction, ruling in this wise:

x x x x

Although in the trial court, Jadewell filed said petition for Certiorari, Prohibition and Mandamus under Rule 65, it is essentially one for Injunction under Rule 58. Said petition's form and substance satisfied

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<sup>136</sup> Id. at 8.

<sup>137</sup> *Rollo* (G.R. No. 174879), p. 3.

<sup>138</sup> *CA rollo*, p. 147.

all the requirements of a civil action for Injunction, which is the proper remedy under the attendant circumstances.

The rules of procedure ought not to be applied in a very rigid technical sense, rules of procedure are used only to help secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.

Considering the clear and patent denial of due process committed by the Sanggunian in precipitately rescinding the MOA and in the interest of substantial justice, WE deem it more prudent to treat the petition filed below as an action for Injunction under Rule 58, which is well within the jurisdiction of the trial court. Consequently, the present appeal shall be considered as an appeal from the permanent injunction ordered by the trial court, which is properly appealable to this Court, as held in *Casilan vs. Ybanez*.<sup>139</sup>

x x x x

We sustain the ruling of the appellate court treating Jadewell's original action for certiorari as one for injunction based on the allegations in the latter's pleadings.

In *Ramon Jimenez, Jr. v. Juan Jose Jordana*,<sup>140</sup> the issue to be resolved was whether the nature of the action was one for specific performance or for recovery of real property. In determining that the case was one for the recovery of real property, the Court characterized the suit on the basis of the allegations in the Complaint. We restated the rule that the nature of an action is determined by the material averments in the complaint and the character of the relief sought. In the recent case of *Reyes v. Alsons Development and Investment Corporation*,<sup>141</sup> we likewise ruled that the nature of an action is determined by the allegations in the pleadings.

In *Lee, Jr. v. Court of Appeals*,<sup>142</sup> the controversy to be resolved was whether the appeal filed by the petitioner was one under Rule 65 or Rule 42. The determination of the issue was crucial, because the appellate court had dismissed the appeal of the petitioner, saying that the wrong mode of appeal had been used. The CA had ruled that petitioner should have filed a certiorari petition under Rule 65 – instead of a petition under Rule 42 – to appeal the assailed decision rendered by the RTC in the exercise of its appellate jurisdiction.

We held:

Our perusal of the petition filed before the Court of Appeals clearly shows that it is a petition for review under Rule 42, and not a

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<sup>139</sup> Id. at 148.

<sup>140</sup> 486 Phil. 452 (2004).

<sup>141</sup> G.R. No. 153936, 2 March 2007, 517 SCRA 244.

<sup>142</sup> 577 Phil. 400, 407-408 (2008).

special civil action for *certiorari* under Rule 65. We note that in the Court of Appeals' petition, under the heading "Nature of the Petition," petitioner stated that it was a "petition for review on *certiorari* to set aside, invalidate and reverse the Decision dated December 14, 2001 of public respondent Judge Victor T. Llamas, Jr." Also, the reversal sought was premised on the ground that the decision was issued in gross error. **The statement under the heading "Nature of the Petition" that the trial courts' decisions were issued with grave abuse of discretion amounting to lack of jurisdiction, and even the caption impleading the lower courts, would not automatically bring the petition within the coverage of Rule 65. It is hornbook doctrine that it is not the caption of the pleading but the allegations therein that determine the nature of the action.** (Emphasis supplied)

In the original action filed by Jadewell before the RTC of Baguio City, although the action was clearly denominated as a Petition for Certiorari, Prohibition and Mandamus against the Sangguniang Panlungsod, the allegations actually supported an action for injunction under Rule 58 of the Revised Rules on Civil Procedure. As can be gleaned from its allegations and especially in its prayers, Jadewell filed the case with the trial court with the ultimate end of restraining the implementation of Resolution No. 037, Series of 2002.

We agree with the CA when it ruled that Jadewell sought permanent injunction aside from the auxiliary remedy of preliminary injunction, thus:

An action for injunction is a recognized remedy in this jurisdiction. It is a suit for the purpose of enjoining the defendant, perpetually or for a particular time, from committing or continuing to commit a specific act, or compelling the defendant to continue performing a particular act. It has an independent existence. The action for injunction is distinct from the ancillary remedy of preliminary injunction, which cannot exist except only as part or an incident of an independent action or proceeding.<sup>143</sup> xxxx...

In *Garcia v. Adeva*,<sup>144</sup> this Court had the opportunity to clarify that while injunction can be a provisional remedy, it can also be a main case. The Court had to make this preliminary distinction in order to find out whether the SEC had the jurisdiction to prevent, on a permanent basis, the commission of certain acts by the respondents. Thus, the necessity to make the distinction between injunction as a provisional remedy and injunction as a main case. It found guidance from *Garayblas v. Atienza, Jr.*,<sup>145</sup> and quoting from the latter:

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the

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<sup>143</sup> CA *rollo*, p. 148.

<sup>144</sup> 550 Phil. 663, 672-673 (2007).

<sup>145</sup> 525 Phil. 291, 306-307 (2006).



main action. The Court has distinguished the main action for injunction from the provisional or ancillary remedy of preliminary injunction, thus:

The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.

**We, therefore, rule that the CA did not commit any error in treating Jadewell’s Petition for Certiorari as an original action for injunction.**

***b. On the denial of due process.***

The second issue in this Petition is the correctness of the CA’s ruling that Jadewell was deprived of due process when the Sangguniang Panlungsod rescinded the MOA. The findings of the CA are as follows:

In the instant case, evidence on record does not show that before the Sanggunian passed the disputed Resolution it gave Jadewell an opportunity to present its side. Neither did the Sanggunian convene an investigatory body to inquire into Jadewell’s alleged violations nor at least invite Jadewell to a conference to discuss the alleged violations, if only to give Jadewell the chance to refute any evidence gathered by it against the latter. As it is, the Sanggunian arrogated upon itself the role of a prosecutor, judge and executioner in rescinding the MOA, all in clear violation of Jadewell’s constitutionally embedded right to due process.<sup>146</sup>  
x x x.

Both courts held that Jadewell was denied due process. When the denial of due process argument is raised, it is directed primarily against the exercise of governmental authority that “deprives life, liberty and property” without observance what is, in the circumstances, the applicable standards of “due process.” It is not an argument that is relevant in situations of contractual breach between two purely private entities, nor is it available against the government when the latter is not discharging a governmental function, but merely pursuing a purely commercial activity in a proprietary capacity. In order to consider the due process argument, this Court must first

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<sup>146</sup> CA *rollo*, pp. 149-150.

determine whether the MOA was entered into by the City of Baguio in a governmental capacity, or in a purely proprietary capacity.

The regulation of on-street and off-street parking is a governmental function that can be exercised by local governments. It is important to understand the objective of the Baguio City Government in: (1) privatizing the administration of on-street and off-street parking; and (2) its execution of a MOA with Jadewell. This can be gleaned from the Explanatory Note and other provisions of the agreement, to wit:

The City of Baguio has earned the reputation of the CLEANEST AND GREENEST HIGHLY URBANIZED CITY for the previous years. This has become possible due to the collective effort of both the Citizens of Baguio and the City Government. However, the increase in population, volume of vehicles and the absence of a regulatory measure to address this concern gradually tainted what used to be a reputation we were proud of.

The ever increasing problems, specifically those relevant to the Traffic situation is at this point the biggest contributor to environmental degradation. Other Salient points we must consider relevant to this matter are the problems on OBSTRUCTION AND DOUBLE PARKING which are very rampant. We further add to these the problems on DISORGANIZED PARKING, LACK OF DEPUTIZED AGENTS to monitor, supervise and enforce traffic rules and regulations.

At this point in time, we feel the immediate need of focusing on these problems. There is an urgent need to adopt measures that would alleviate these matters. This we recommend that PARKING SPACES should be REGULATED in such a manner that it would bring advantage both to the City Government and the Citizens of Baguio. We further propose the collection of REGULATORY FEES that would be used in maintaining our roads and to hire people that would be deputized to help ease the problems as stated above.

Finally, we believe that our roads are beyond the Commerce of Man. To convert our roads into PAY PARKING SPACES, would be violative of this principle. However to REGULATE its use and its eventual effect would redound to the GENERAL WELFARE will be an appreciated gesture to help preserve our image as the CLEANEST AND GREENEST HIGHLY URBANIZED CITY.

X X X X

**SECTION 4. Parking spaces.** A parking place may be divided into parking spaces and for the purposes of this Ordinance, each space or for a number of spaces as determined by the private parking operator in consultation with the concerned Official of the City of Baguio.

X X X X

**SECTION 5. Prohibitions against parking outside the parking spaces.** No spaces shall park any motor vehicle on the sidewalk or cause or permit any motor vehicle to wait to any road or length of road on which in any

place in which or adjacent to or in close proximity to which there is a parking place.

X X X X

**SECTION 7. Payment of Prescribed Charges.** (1) No person shall park any motor vehicle in a parking place or parking space during the times specified in this Ordinance without paying the prescribed charge for the required parking period; (2) The prescribed charge payable in respect to the parking of a motor vehicle in a parking space shall be paid by the insertion into the parking meter provided for that parking space a coin/coins of Philippine Currency or by using cards in order to obtain the payment ticket to evidence the payment of the prescribed charge; (3) The payment ticket shall be displayed at a conspicuous part of a motor vehicle in a parking place or parking space; (4) The payment ticket shall be valid to be used on any parking space within the authorized period indicated in the payment ticket.

X X X X

**SECTION 22. Rules.** The Memorandum of Agreement (MOA) to be entered into by the City Mayor shall be governed by this Ordinance.

From the above, the following are clear: (1) that the City of Baguio decided on the privatization of the administration of parking for environmental and peace and safety reasons, both of which are within its powers under Section 458(A)(5)(v) and (vi) of the Local Government Code; and (2) that the terms of agreement between the City of Baguio and Jadewell involve the delegation of governmental functions in terms of regulating the designation and use of parking spaces as well as the collection of fees for such use. These are indicators that any privatization contract pursuant to the above Resolution takes the essential character of a franchise because what is being privatized is a government-monopolized function.

It would thus be relevant to ask if there is a provision in the applicable laws or the franchise (MOA) that grants the City of Baguio the right to revoke the latter either at will, or upon the satisfaction of certain conditions, such that ordinary due process protection can be considered to have been waived by the franchisee. We must caution that when we refer to revocation at will here, we are referring to the revocation of resolutory, not suspensive, obligations.<sup>147</sup>

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<sup>147</sup> When a contract is subject to a suspensive condition, its birth or effectivity can take place only if and when the event which constitutes the condition happens or is fulfilled. If the suspensive condition does not take place, the parties would stand as if the conditional obligation has never existed. (*Insular Life Assurance Co., Ltd. v. Young*, 424 Phil. 675, 694 (2002)). On the other hand, a resolutory condition is one that constitutes a future and uncertain event upon the happening or fulfillment of which rights which are already acquired by virtue of the obligation are extinguished or lost. (*Multinational Village v. Ara Security*, 484 Phil. 74 (2004)).

We have looked closely at Resolution No. 003-2000 and the MOA and have additionally reflected on the applicable provision under the Civil Code. We have come to the conclusion that:

- (a) There is only one provision that allows for unilateral revocation of the MOA, which can be found in Section 9 thereof:

9. Minimum Guaranty – The FIRST PARTY guaranties (sic) a minimum period of five (5) years against rescission; provided that after such period, the parties may agree to increase to a reasonable rate the parking fees and the share of the city from the parking fees collected as provided for in the guidelines, (Annex “B”);

- (b) This Section 9 requires that five years must have lapsed – presumably from the date of execution of the MOA – before the unilateral right to revoke the MOA can be exercised;

- (c) Therefore, before the five year period has lapsed, the right to revoke the MOA arises only under Article 1191 of the Civil Code, which reads:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

From the above, it appears that in order to effect a valid revocation of the MOA prior to the lapse of the 5-year period provided for in Section 9, the City of Baguio had to approach the problem from one or both of two perspectives: **one**, negotiate the termination of the MOA with Jadewell, or **two**, exercise its option under Article 1191 of the Civil Code.

The first option, a negotiated pretermination of the contract, is an inherent right of every party in a contract. This can be inferred from the freedom of the parties to contract and modify their previous covenants provided it would not be contrary to law, morals, good customs, public order

or public policy.<sup>148</sup> Despite the provision on the minimum warranty against rescission stipulated in the MOA, the parties were not constrained to mutually modify such restriction. The Sanggunian could have proposed to Jadewell the possibility of lifting the warranty against rescission subject to the condition that the latter will comply with its obligations under the MOA. This scenario could have impressed upon Jadewell that its contractual relations with the city government of Baguio were less than ideal. The suggested approach for the Sanggunian could have been legally sound and practical. Obviously, this was not done in this case; thus, Jadewell's Complaint before the RTC of Baguio City.

The second option is the exercise of the unilateral right to rescind a bilateral contract on the part of a party who believes that it has been injured by a breach substantial enough to warrant revocation. Where one party allegedly failed to comply with his obligations under a contract, the injured party may rescind the obligation if the other does not perform or is not ready and willing to perform.<sup>149</sup> We will examine the acts of Baguio City in relation to what is allowed under Article 1191.

Rescission under Article 1191 takes place through either of two modes: (1) through an extrajudicial declaration of rescission; or (2) upon the grant of a judicial decree of rescission.

Extrajudicial declaration of rescission is recognized as a power which does not require judicial intervention.<sup>150</sup> If the rescission is not opposed, extrajudicial declaration of rescission produces legal effect<sup>151</sup> such that the injured party is already relieved from performing the undertaking.<sup>152</sup>

However, the power of declaring extrajudicial rescission conferred upon the injured party is regulated by the Civil Code. If the extrajudicial rescission is impugned by the other party, it shall be subject to a judicial determination<sup>153</sup> where court action must be taken, and the function of the court is to declare the rescission as having been properly or improperly made, or to give a period within which the debtor must perform the obligation alleged to be breached.<sup>154</sup> A unilateral cancellation of a contract may be questioned in courts by the affected party to determine whether or not cancellation is warranted.<sup>155</sup> Thus, in an extrajudicial decree of rescission, revocation cannot be completely exercised solely on a party's

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<sup>148</sup> *Brent School v. Zamora*, G.R. No. L-48494, 5 February 1990, 181 SCRA 702.

<sup>149</sup> ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES. Vol. IV 176 (1997).

<sup>150</sup> *Id.* at 177, citing *Angeles v. Calasanaz*, 136 SCRA 323.

<sup>151</sup> *Id.* at 178.

<sup>152</sup> *Id.* at 177.

<sup>153</sup> *Id.* at 178.

<sup>154</sup> *Id.*, citing *Perez Gonzales & Alguer*; 2-I Enneccerus, Kipp & Wolf 196.

<sup>155</sup> ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES. Vol. IV 179 (1997), citing *Angeles v. Calasanaz*, 136 SCRA 323.

own judgment that the other has committed a breach of the obligation<sup>156</sup> but always subject to the right of the other party to judicially impugn such decision.

It is important to contextualize that the agreement entered into by the City of Baguio with Jadewell is the embodiment of a grant of franchise imbued with public interest and is not merely an agreement between two private parties.

It is our view that the first act of rescission by the City of Baguio may be valid even if there is a stipulation against it within the first five years of the MOA's existence. Article 1191 of the New Civil Code provides a party the right to rescind the agreement and clearly overrides any stipulation to the contrary. However, the grounds that would serve as basis to the application of the said article must be clearly established.

In the exercise of this option under Article 1191, was it necessary for the City of Baguio to provide Jadewell an opportunity to air its side on the matter before the former implemented the rescission of the MOA? In the instant case, was Jadewell deprived of procedural due process?

We answer in the negative. We disagree with the rulings of the RTC and the CA that Jadewell was deprived of due process. In *Taxicab Operators of Metro Manila v. The Board of Transportation*,<sup>157</sup> we confronted the issue of whether the petitioners were denied procedural due process when the respondent Board of Transportation issued a circular ordering the phasing out of old vehicles to be used as taxicabs. In the said case, the phase-out was embodied in a circular that was promulgated without holding a public hearing or at least requiring those affected to submit their position papers on the policy to be implemented. We held for the respondent Board, and ruled in this wise:

Dispensing with a public hearing prior to the issuance of the Circulars is neither violative of procedural due process. As held in *Central Bank vs. Hon. Cloribel and Banco Filipino*, 44 SCRA 307 (1972):

Previous notice and hearing as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. It is not essential to the validity of general rules or regulations

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<sup>156</sup> ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES. Vol. IV 177 (1997), citing *Rubio de Larena v. Villanueva*, 53 Phil. 923 (1924); *Guevara v. Pascual*, 12 Phil. 311 (1908); *Escueta v. Pando*, 76 Phil. 256 (1946).

<sup>157</sup> 202 Phil. 925, 934 (1982).

promulgated to govern future conduct of a class or persons  
or enterprises, unless the law provides otherwise.

In the instant case, the assailed act by the Sanggunian Panlungsod in rescinding the MOA – be it first or second act of rescission – was clearly in the exercise of its legislative or administrative functions and was not an exercise of a judicial or quasi-judicial function. The Sanggunian Panlungsod does not possess any judicial or quasi-judicial functions. The preamble of the MOA lends support to this view. Evidently, the foremost reason why the agreement was entered into by the parties was to provide order, given Baguio City’s parking problems in identified areas, as well as to generate income.

The objectives of the Sanggunian Panlungsod, as well as its intention to rescind the MOA; because it deems to no longer serve the interest of the City of Baguio, are clearly an exercise of its legislative or administrative function. However, it is another matter as to whether the City of Baguio was able to clearly establish the grounds as basis for the exercise of its right to rescind.

***c. On the allegation of Jadewell’s  
substantial breach of the MOA.***

The Baguio City government has repeatedly mentioned that Jadewell had so far installed only 14 parking meters, with only 12 functioning. The COA-CAR Report dated 13 July 2003 enumerated 12 findings,<sup>158</sup> a majority of which indicates that Jadewell was remiss in the fulfilment of its obligations under the MOA. While Finding Nos. (1), (2), (3), (4), (5), (8) and (12) of the COA-CAR Report state that Jadewell collected parking fees, Jadewell failed to properly remit the same. Finding No. (11) of the COA-CAR Report states that Jadewell failed to have its parking attendants deputized,<sup>159</sup> a condition under the MOA that is also important to the overall objective of the endeavor.

The MOA does not specifically provide for the exact number of parking meters to be installed by Jadewell pursuant to the parties’ objective in regulating parking in the city. Nevertheless, 100 parking spaces were allotted as mentioned in Annex A of the MOA.<sup>160</sup> The agreement also obligates Jadewell to have its parking attendants deputized by the DOTC-LTO so that they shall have the authority to enforce traffic rules and

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<sup>158</sup> Supra note 46.

<sup>159</sup> Supra note 59.

<sup>160</sup> MOA, Section 6 states:

Parking Fees and Exclusivity – (a) The FIRST PARTY subject to existing ordinances and under its supervision do hereby authorize the SECOND PARTY the function and responsibility to collect parking fees, towing fees, impounding fees, fines and penalties as provided for in the ordinance over parking spaces listed in Annex “A” hereof during the term and existence of this agreement, specifically provided for in the following Sections of Ordinance No. 003, Series of 2000, x x x.

regulations in the regulated areas.<sup>161</sup> To the Court's mind, these are two of the most important obligations that Jadewell had to comply with, considering the nature and objective of the agreement it had entered into.

Despite the enumeration of the above-mentioned faults of Jadewell, we do not make a categorical finding that there was substantial breach committed by Jadewell to justify a unilateral rescission of the MOA. We find, however, that the RTC had not properly received evidence that would allow it to determine the extent of the claimed violations of the MOA. Had these violations by Jadewell been proven in a proper hearing, the finding of a substantial breach of the MOA would have been a distinct probability.

Unfortunately, neither the RTC nor the CA provided a clear basis for their rulings on the extent of the breach of the MOA by Jadewell. Save from reiterating the Sanggunian's litany of violations said to be committed by Jadewell, there was no testimony on record to prove such facts and no indication as to whether the RTC or CA dismissed them or took them at face value.

Whatever the extent of breach of contract that Jadewell may have committed – and the enumeration of Jadewell's alleged faults in Resolution 37 is quite extensive – the City of Baguio was still duty-bound to establish the alleged breach.

Matters became complicated when the RTC and the CA lumped the issues on the due process violation of Baguio City with Jadewell's alleged substantial breaches under the MOA, instead of making a clear finding on the existence and extent of such breach. The facts and legal issues were thus muddled.

We find fault in the lower and appellate court's lapse in examining the issue on Jadewell's alleged substantial breach. Evidence-taking had to be undertaken by these courts before they could arrive at a judicial conclusion on the presence of substantial breach.

We thus **DENY** the Petition of the Sanggunian Panlungsod in G.R. No. 160025 and **AFFIRM** the questioned CA Decision. However, we reject the ruling made by the appellate court that the violations of Jadewell under the MOA were not substantial. We hold that there is no sufficient evidence on record to make such determination.

While Jadewell prays for damages against the public respondent, and while ordinarily we could grant the same, the context of this case prevents us from giving any form of recompense to Jadewell even if the rescission of the MOA did not follow the required legal procedure. This is because it would

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<sup>161</sup> Section 4 (b) first paragraph of the MOA.



be appalling to grant Jadewell any award of damages, considering (1) it installed only 14 out of the apparently 100 contemplated parking meters; (2) its employees, private citizens who did not possess any authority from the LTO, were manually collecting parking fees from the public, and (3) it did not, apparently properly remit any significant amount of money to the City of Baguio. These three facts are uncontested, these omissions are offensive to the concept of public service that the residents of Baguio were promised through Jadewell. From its ambiguous responses extant in the records, it is clear that Jadewell does not appear to be an investor who has lost in its investments in the Baguio City project. Thus, we do not award any damages to Jadewell.

**2. On G.R. Nos. 163052, 164107,  
165564, 172216, 173043 and 174879  
(The Contempt Petitions)**

Section 3 of Rule 71 of the Revised Rules of Civil Procedure enumerates the acts constituting indirect contempt, thus:

- (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
- (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;
- (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
- (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
- (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
- (f) Failure to obey a subpoena duly served;
- (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

The rule alerts us to three possible situations, wherein, in the context of the facts of these petitions, contumacious behaviour could have been committed by public respondents. **First**, disobedience or resistance to a lawful order of this Court under paragraph (b). **Second**, unlawful interference with the proceedings of this Court under paragraph (c). **Third**, improper conduct tending, directly or indirectly, to impeded, obstruct, or degrade the administration of justice by this Court under paragraph (d).

Jadewell, in G.R. Nos. 163052, 164107, 165564, 172216, 173043, and 174879, bases its charges of indirect contempt against public respondents on a claim that any action that tends to stop the implementation of the MOA is contumacious. Such actions include desistance orders to desist against Jadewell itself, the second act of unilateral rescission of the MOA; orders to other public officers to prevent Jadewell from exercising its authority under the MOA; and the official encouragement for motorists to resist attempts of Jadewell to collect parking fees or clamp/tow vehicles that do not observe the parking regulations.

We find scant jurisprudence to guide us on this matter. The closest situation is that presented in *Southern Broadcasting Network v. Davao Light and Power*,<sup>162</sup> penned by Justice Felix Makasiar. In that case, petitioner's representative, Carmen Pacquing, wrote a letter to President Marcos asking for his intervention so that her Motion for Reconsideration (MR) of the resolution of this Court denying her Petition could be favorably granted. Respondent Davao Light asked that petitioner Pacquing be cited for contempt, arguing that her act in writing to the President asking him to intervene in the case showed disrespect to and disregard for the authority of this Court as the final arbiter of all cases. We found petitioner Pacquing guilty of contempt, thus:

x x x. WE hold that such actuation of herein petitioner's representative only bespeaks more of her contumacious attempt to trifle with the orderly administration of justice because if she know that this Court will ultimately decide the case "regardless of the President's intervention," then she should have desisted from writing to the President.

In the light of the foregoing, there is no doubt that Mrs. Pacquing committed an "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" (Section 3, par. [d] Rule 71, Rules of Court) and impair the respect due to the courts of justice in general, and the Supreme Court, in particular.

In the above case, respondent Carmen Pacquing was clearly asking the President to commit an improper act – to influence the Supreme Court – that obstructs the orderly administration of justice, as the Court is constitutionally required to act independently free from the promptings of

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<sup>162</sup> 187 Phil. 496, 502 (1980).

the President. Pacquing clearly violated both Sections (c) and (d) of Section 3, Rule 71.

No such similar situation occurred here. Public respondents never asked anyone to employ pressure or influence on this Court for the former's benefit.

Instead, the acts that have been allegedly committed by public respondents are acts done pursuant to their belief that: (a) the MOA has been validly voided, and more importantly, (b) that Jadewell's personnel do not have the legal authority to perform the governmental function of administering the regulation of on-street and off-street parking, of towing or clamping vehicles that violate such regulation, and of collecting parking fees from motorists.

It is important to note that the Court never gave a mandatory injunction that is couched in a way that requires public respondents to fully comply with the terms of the MOA. The writ of preliminary mandatory injunction (WPMI) issued on 9 February 2005 is directed to Mayor Yaranon only, and it directs him to perform only one specific act: to reopen, and maintain open, the street and premises then being occupied and operated by Jadewell.

Mayor Yaranon did not immediately comply with this WPMI. Thus, this Court fined him ₱10,000 on 20 April 2005, and ordered the NBI to arrest him if he further failed to comply with the WPMI. Subsequently, Mayor Yaranon paid the fine, and there is nothing on record to show that he has, since April of 2005, further defied this Court on that score.

The Court did not issue a WPMI specifically ordering the parties to observe the terms of the MOA. Thus, public respondents were not expressly prohibited to act on their beliefs regarding the validity or invalidity of the MOA, or, the authority or lack of authority of Jadewell personnel to perform governmental functions in the streets of Baguio.

This is an important result, because to hold otherwise is to effectively grant one of the parties a mandatory injunction even without an express resolution to this effect from the Court. Without an express order, the pendency of a suit before the Supreme Court is not a *prima facie* entitlement of provisional relief to either party.

Public respondents therefore were, at liberty to question and inform the public of their belief regarding the lack of authority of Jadewell and its personnel to regulate public parking in Baguio. They were certainly free to formally write Jadewell on their beliefs and pass the corresponding resolutions to this effect. The mayor was also not under legal compulsion to renew Jadewell's business permit in view of his opinion that Jadewell was

exceeding its allowable area of operation, which Jadewell was not able to fully disprove. This is especially true for two important reasons: (1) there is an uncontested cease and desist order that was issued by the DOTC-CAR on 13 March 2002 which Jadewell defied well into 2005, and (2) public respondents are city officials of Baguio who have the legal duty to ensure the laws are being followed, including laws that define who may enforce regulations on public parking.

That Jadewell personnel do not have the legal authority to enforce regulations on public parking is categorical from the Letter dated 1 February 2001 by the Regional Director of the DOTC-CAR denying the request of Jadewell for the deputation of its personnel.<sup>163</sup>

We therefore do not find any of the public respondents who were then officials of the City of Baguio, liable for indirect contempt, and thereby dismiss G.R. Nos. 163052, 164107, 165564, 173043 and 174879. In G.R. 174879, we have already pronounced that the Sanggunian was within its full right to perform the second act of rescission, and thus, it is even with more reason, that its members and the City Legal Officer cannot be held in contempt therefor. We deny the prayer in the petitions to disbar the respondents therein who are lawyers.

We also do not find Judge Fernando Vil Pamintuan liable for contempt in G.R. No. 172216.

Jadewell wants this Court to cite Judge Pamintuan for contempt for issuing a writ of preliminary prohibitory injunction ordering Jadewell to stop collecting parking fees; to refrain from supervising the parking in Baguio City; as well as to hold in abeyance the implementation of the MOA and its enabling ordinance.<sup>164</sup>

It was only on 5 June 2006 that this Court, in G.R. No. 172215, issued a Temporary Restraining Order (TRO)<sup>165</sup> directing the trial court to discontinue the proceedings in Civil Case No. 6089-R. Upon receipt by Judge Pamintuan of the TRO, he immediately ordered the cancellation of the 29 June 2006 hearing.<sup>166</sup>

We do not consider the promulgation of the assailed writ of preliminary prohibitory injunction against Jadewell as a defiance of our writ issued on 9 February 2005, considering, it was directed against Mayor Yaranon only. We have held in *Leonidas v. Supnet* that “a party cannot be held in indirect contempt for disobeying a court order which is not addressed to him.”<sup>167</sup> We note that Judge Pamintuan observed deference to the Orders

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<sup>163</sup> *Rollo* (G.R. No. 172215), p. 91.

<sup>164</sup> *Rollo* (G.R. No. 172216), pp. 13-14.

<sup>165</sup> *Rollo* (G.R. No. 172215), p. 549.

<sup>166</sup> *Rollo* (G.R. No. 172216), p. 1030.

<sup>167</sup> 446 Phil. 53, 70 (2003), citing the case of *Canas v. Castigador*, 348 SCRA 425 (2000).

of this Court when he immediately suspended the proceedings in Civil Case No. 6089-R upon receipt of the TRO.

***G.R. No. 172215***

In this Petition for certiorari, prohibition, and mandamus under Rule 65 of the Rules of Civil Procedure, Jadewell assails the Orders of RTC-Branch 3 (Baguio City) denying its motion to dismiss and motion for reconsideration in Civil Case No. 6089-R.

We **deny** the petition of Jadewell in this case.

In *Manuel Camacho v. Atty. Jovito Coresis, Jr.*,<sup>168</sup> we described the nature of special civil action for certiorari under Rule 65, as follows:

A special civil action for *certiorari* under Rule 65 of the Rules of Court is an extraordinary remedy for the correction of errors of jurisdiction. To invoke the Court's power of judicial review under this Rule, it must first be shown that respondent tribunal, board or officer exercising judicial or quasi-judicial functions has indeed acted without or in excess of its or his jurisdiction, and that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. Conversely, absent a showing of lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, the acts of the respondents may not be subjected to our review under Rule 65.

In *Indiana Aerospace University v. Commission on Higher Education*,<sup>169</sup> this Court ruled thus:

An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted to only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts -- acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the court.

In *East Asia Traders, Inc. v. Republic of the Philippines, et al.*,<sup>170</sup> we decreed:

The petition for certiorari and prohibition filed by petitioner with the Court of Appeals is not the proper remedy to assail the denial by the RTC of the motion to dismiss. **The Order of the RTC denying the motion to dismiss is merely interlocutory.** An interlocutory order does not terminate nor finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. It is

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<sup>168</sup> 436 Phil. 449, 458 (2002).

<sup>169</sup> 408 Phil. 483, 501 (2001).

<sup>170</sup> 433 SCRA 716, 723-724.

always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This proceeds from the court's inherent power to control its process and orders so as to make them conformable to law and justice. The only limitation is that the judge cannot act with grave abuse of discretion, or that no injustice results thereby.

*East Asia Trader* also reiterated our ruling in *Indiana Aerospace*. Further, in *Bonifacio Construction Management Corporation v. Hon. Perlas Bernabe*,<sup>171</sup> we reiterated our rulings in *East Asia Traders* and *Indiana Aerospace*. **We had ruled in these earlier cases that an order of the trial court denying a motion to dismiss is an interlocutory order, and to use a writ of certiorari to assail it is improper.**

The procedural policy in the cited cases was again referred to in *Bernas v. Sovereign Ventures, Inc.*,<sup>172</sup> highlighting the following:

Let it be stressed at this point the basic rule that when a motion to dismiss is denied by the trial court, **the remedy is not to file a petition for certiorari, but to appeal after a decision has been rendered.** (Emphasis supplied)

### ***G.R. No. 181488***

The question of law raised by petitioner Yaranon in this Petition for Review on Certiorari is whether the CA correctly dismissed his appeal questioning the validity of his suspension from office as City Mayor, on the ground that his suit had become moot and academic due to his non-re-election to office. The CA cited *Crespo v. Provincial Board of Nueva Ecija*<sup>173</sup> as basis for the dismissal.

For his part, Mayor Yaranon contends that the appellate court should have ruled on the validity of his suspension from office despite his failure to get re-elected as City Mayor. He argues that he has the right to know whether his suspension was valid or not and, in the event his suspension is declared invalid, Mayor Yaranon believes he is entitled to the salaries and benefits accruing during the period he was suspended.

**We deny** the Petition of Mayor Yaranon.

The appeal of Mayor Yaranon has been rendered moot and academic. We hold that the resolution of the issue raised herein would serve no practical purpose.

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<sup>171</sup> 501 Phil. 79 (2005).

<sup>172</sup> 528 Phil. 584, 590 (2006).

<sup>173</sup> 243 Phil. 230 (1988).

In *Miriam College v. Court of Appeals*,<sup>174</sup> we ruled that a case becomes moot and academic when there is no more actual controversy between the parties, or when no useful purpose can be served in passing upon the merits. Further, courts will not determine a moot question in which no practical relief can be granted.<sup>175</sup>

Mayor Yaranon has already served his suspension. We find no practical value in remanding his case to the appellate court for the determination of the factual basis and legal issues of his appeal pertaining to the validity of his suspension as then City Mayor of Baguio City.

We have held in *Nicart, Jr. v. Sandiganbayan (Third Division)*,<sup>176</sup> that an issue becomes moot when a petitioner is not entitled to substantial relief:

x x x [T]he propriety of the preventive suspension of petitioner effected through the assailed Resolution of February 15, 2001 has become a moot issue, it appearing that he has already served his suspension. An issue becomes moot and academic when it ceases to present a justifiable controversy so that a determination thereof would be of no practical use and value. In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.

We cannot sustain Mayor Yaranon's argument that his appeal should not have been dismissed because, in the event that the finding of the Office of the President to suspend him is reversed, he is still entitled to the salaries accruing during the period he was suspended. We take note of the cases cited by Mayor Yaranon such as *Crespo v. Provincial Board of Nueva Ecija*,<sup>177</sup> *Baquerfo v. Sanchez*,<sup>178</sup> and *Reyes v. Cristi*,<sup>179</sup> among others. These cases involve substantial issues – such as denial of due process and procedural irregularities – other than a mere claim for entitlement to salaries. The factual background and the legal issues for resolution in the cases mentioned are not similar to the case at bar.

In *Triste v. Leyte State College Board of Trustees*<sup>180</sup> the Court elucidated on the nature of the salary of a public official:

Mechem states that "(l)ike the requirement of an oath, the fact of the payment of a salary and/or fees may aid in determining the nature of a position, but it is not conclusive, for while a salary or fees are usually annexed to the office, it is not necessarily so. As in the case of the oath, **the salary or fees are mere incidents and form no part of the office.** Where a salary or fees are annexed, the office is often said to be 'coupled

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<sup>174</sup> 401 Phil. 431 (2000).

<sup>175</sup> *Serag v. Court of Appeals*, 510 Phil. 362 (2005).

<sup>176</sup> 527 Phil. 402, 407-408 (2006).

<sup>177</sup> Supra note 169.

<sup>178</sup> 495 Phil. 10 (2005).

<sup>179</sup> A.M. No. P-04-1801, 02 April 2004, 427 SCRA 8.

<sup>180</sup> G.R. No. 78623, 17 December 1990, 192 SCRA 326, 338.

with an interest'; where neither is provided for it is a naked or honorary office, and is supposed to be accepted merely for the public good." (Emphasis supplied)

Given the circumstances of this case, we find that Mayor Yaranon's claim for unpaid salaries, in case of exoneration, does not constitute such substantial relief that would justify the revival of his appeal. Even if we did sustain his Petition, we nevertheless find that it has been mooted by our resolution in the main petition.

**WHEREFORE**, we hereby rule as follows:

- a.) In **G.R. No. 160025**, the Petition of the Sangguniang Panlungsod of Baguio City is **DENIED**. The CA Decision dated 7 July 2003 in CA G.R. SP No. 74756 is hereby **AFFIRMED** with modification. There is not enough evidence on record to conclude that Jadewell's violations were sufficient to justify the unilateral cancellation of the MOA by the Sangguniang Panlungsod of Baguio City; at the same time, neither the RTC nor the CA provided a clear finding whether the breach of the MOA by Jadewell was substantial. We affirm the CA as to the rest of its dispositions in its assailed Decision. Nevertheless, no award of damages is hereby made in favour of Jadewell and neither is there any pronouncement as to costs.
- b.) **G.R. Nos. 163052, 164107, 165564, 172216, 173043 and 174879**, the Petitions of Jadewell to cite Mayor Braulio D. Yaranon, Mayor Bernardo M. Vergara, Acting City Mayor Reinaldo A. Bautista, Vice Mayor Betty Lourdes F. Tabanda, the members of the Sangguniang Panlungsod of Baguio City namely: Elmer O. Datuin, Antonio R. Tabora, Edilberto B. Tenefrancia, Federico J. Mandapat, Jr., Richard A. Carino, Faustino A. Olowan, Rufino M. Panagan, Leonardo B. Yangot, Jr., Rocky Thomas A. Balisong, Galo P. Weygan, Perlita L. Chan-Rondez, Jose M. Molintas, and Judge Fernando Vil Pamintuan for indirect contempt and to disbar Sangguniang Panlungsod members Rocky Thomas A. Balisong, Edilberto B. Tenefrancia, Faustino A. Olowan, Federico J. Mandapat, Perlita L. Chan-Rondez, Jose M. Molintas, Melchor Carlos B. Rabanes and Mayor Braulio D. Yaranon are all hereby **DISMISSED** for lack of merit. No pronouncement as to costs.
- c.) We **DENY** the Petition of Jadewell for lack of merit in **G.R. No. 172215**. We likewise **DENY** its prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction for being moot and academic. No pronouncement as to costs.
- d.) We **DENY** the Petition of Mayor Braulio D. Yaranon in **G.R. No. 181488**, for lack of merit and **AFFIRM** the CA Decision CA-G.R. SP No. 96116. No pronouncement as to costs.



**SO ORDERED.**




**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

WE CONCUR:



**TERESITA J. LEONARDO DE CASTRO**


Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice