

TIRSO UYTENGUSU III, COMPLAINANT, VS. ATTY. JOSEPH M. BADUEL, RESPONDENT.

ADM. CASE NO. 5134. December 14, 2005

Ponente: TINGA, J.

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TINGA, J.:

A sworn letter-complaint[1] dated 1 July 1999[2] was filed by Tirso Uytengsu III (complainant) against Atty. Joseph M. Baduel (respondent) for violation of Rule 1.01[3] of the Code of Professional Responsibility.

Complainant is one of the heirs of Tirso Uytengsu, Jr. He and his co-heirs had a pending patent application. He alleges that sometime in December 1998 respondent requested him to sign a special power of attorney (SPA) authorizing Luis Wee (Wee) and/or Thomas Jacobo (Jacobo) to claim, demand, acknowledge and receive on his behalf the certificates of title from the Register of Deeds, General Santos City, Department of Environment and Natural Resources and from any government office or agency due to complainant and his co-heirs by reason of their application for Homestead Patent II.A. No. 37 142 (E 37 124) over Lot 924-A Cad. II-013120-D with an area of 5.3876 hectares and II.A. No. 116303 over Lot No. 924-B Cad. II-013120-D with an area of 5,1526 hectares, both situated in Lagao, General Santos City.

Complainant refused to sign the SPA as he wanted to obtain the documents personally. Subsequently though, before he could get the title and other documents, complainant learned that respondent caused to have the SPA signed by Connie U. Kokseng (Kokseng), the former guardian of the heirs of Tirso Uytengsu, Jr. Complainant maintains that the document signed by Kokseng was the same SPA which was presented to him for signature by respondent in December 1998. As a result, the titles and other documents were received and taken by other persons without his or his co-heirs' knowledge and consent.

Complainant contends that the said SPA was prepared and notarized by the law office of respondent and the latter stood as a witness to the public instrument. Complainant further avers that respondent used to do some legal work for him and knew fully well that Kokseng has already ceased to be his and his co-heirs' guardian when the Regional Trial Court, Branch 19 of Cebu City terminated the letters of guardianship over her youngest sibling on 30 August 1985 in the case entitled "In the Matter of Guardianship of Tirso M. Uytengsu III, Kathleen Anne M. Uytengsu, and Barbara Anne M. Uytengsu," docketed as SP Proc. No. 3039-R.

In essence, complainant asserts that respondent caused Kokseng to execute an SPA in favor of Wee and/or Jacobo to the damage and prejudice of the heirs of Tirso Uytengsu, Jr. even if he knew that Kokseng had no authority to do so.

Respondent in his comment,[4] argues that the allegations of complainant are purely hearsay. He stresses that complaint was instituted to harass him because he was the counsel of an opposing litigant against complainant's corporation in an ejectment case entitled "General Milling Corporation v. Cebu Automatic Motors, Inc. and Tirso Uytengsu III."

On 9 August 2000, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[5]

Notices of hearing were sent to both parties between 11 January 2001 and 8 May 2001. However, no actual hearings were conducted then due to the unavailability of either or both parties. Finally, on 26 June 2001, both parties appeared before the investigating commissioner. They were then directed to file their position papers and their respective replies thereto.

Investigating Commissioner Tyrone Cimafranca submitted his Report and Recommendation dated 2 April 2002, recommending the dismissal of the case. The Commissioner characterized the evidence against respondent as hearsay. Moreover, the Commissioner concluded that Kokseng had legal basis to execute the SPA in favor of a substitute, the records showing that complainant and his co-heirs have constituted Kokseng as their attorney-in-fact for the purpose of filing the homestead application.[6]

Thereafter, the IBP submitted their resolution dated 29 June 2002 approving and adopting the report and recommendation of the investigating commissioner, dismissing the complaint against respondent.[7] Complainant filed his motion for reconsideration[8] but was denied by the IBP in its resolution dated 19 October 2002 on the ground that the IBP no longer had jurisdiction to consider and resolve a matter already endorsed to this Court.[9] This notwithstanding, the Court remanded[10] the administrative case for immediate resolution of the motion for reconsideration on the merits to the IBP in the Court's resolution dated 20 January 2003.[11]

On 27 February 2004, the IBP filed its resolution adopting and approving the investigating commissioner's report and recommendation denying complainant's motion for reconsideration.[12]

Subsequently, on 1 July 2004,[13] complainant filed a petition for review on certiorari[14] assailing the resolution of the IBP dated 27 February 2004.

In his petition for review, complainant questions the findings of the IBP that complainant's allegations were based on hearsay and in finding that Kokseng had the authority to execute the special power of attorney in favor of Wee and/or Jacobo.

We dismiss the complaint.

At the outset, the Court finds that herein respondent was in fact the counsel in the homestead patent application of the heirs of Tirso Uytengsu, Jr. This can be deduced from the letters[15] dated 9 October 1991 and 15 January 1993, addressed to respondent by Victoria Villazor-Inong (Villazor-Inong), Accounts Liquidation Officer III of the Board of Liquidators of General Santos City.

In said letters, Villazor-Inong communicated to respondent the requirements for the grant of the homestead patent to herein complainant and his co-heirs. From the tenor of the letters, it would seem that respondent actively participated in representing complainant and his co-heirs in their patent application for the subject land. Apparently, he stood as counsel for the heirs of Tirso Uytengsu, Jr.

With that ostensible representation and without any evidence to show that complainant or his co-heirs withdrew such authority from respondent, the latter himself can even claim the certificates of titles and other documents with regard to the homestead patents.

It should be remembered that the first letter of Villazor-Inong addressed to respondent was on 9 October 1991.[16] The addressees of the said letter were "The Heirs of Tirso Uytengsu, Jr., Rep. by Connie Uytengsu Kokseng, c/o Atty. Joseph Baduel."

Complainant also presented a letter[17] dated 23 September 1992 addressed to Villazor-Inong by the general

manager of the Board of Liquidators, directing the former to personally contact the heirs of Tirso Uytengsu, Jr. to ascertain who among the persons giving conflicting directives as to the course of the patent application is the true authorized representative of the heirs of Tirso Uytengsu, Jr.

After four (4) months, respondent received from Villasor Inong another letter,[18] dated 15 January 1993, also attached to complainant's position paper and petition for review, furnishing respondent the requirements needed for the homestead patent application of complainant and his co-heirs.

Complainant himself submitted all the aforementioned letters clearly showing that respondent was indeed the counsel or representative of complainant in the application for patent.

The relation of attorney and client is in many respects one of agency and the general rules of ordinary agency apply to such relation.[19] The extent of authority of a lawyer, when acting on behalf of his client outside of court, is measured by the same test as that which is applied to an ordinary agent.[20]

Such being the case, even respondent himself can acquire the certificates of title and other documents without need of an SPA from complainant and his co-heirs.

In addition, the Court agrees with the investigating commissioner that the allegations of complainant constitutes mere hearsay evidence and may not be admissible in any proceeding.

In *Marcelo v. Javier*,[21] it was held that:

In all cases the determination whether an attorney should be disbarred or merely suspended for a period involves the exercise of a sound judicial discretion, mindful always of the fact that disbarment is the most severe form of disciplinary action and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. In cases of lighter offenses or of first delinquency, an order of suspension, which is correctional in nature, should be inflicted. In view of the nature and consequences of a disciplinary proceedings, observance of due process, as in other judicial determination, is imperative along with presumption of innocence in favor of the lawyer. Consequently, the burden of proof is on the complainant to overcome such presumption and establish his charges by clear preponderance of evidence.[22]

Procedural due process demands that respondent lawyer should be given an opportunity to cross-examine the witnesses against him. He enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. The case must be established by clear, convincing and satisfactory proof.[23]

In the case at bar, other than the bare assertions of complainant, the evidence presented by the latter does not suffice to tip the scale of justice to his side.

It should be stressed that in administrative proceedings, complainant has the burden of proving the allegations in the complaint. We cannot depend on mere conjectures and speculations. There must be substantial evidence to support respondent's guilt.[24]

Complainant averred that: (1) the SPA which the respondent asked him to sign was the same document that Kokseng executed; (2) the document was notarized by a notary public from the office of the respondent; and (3) the respondent was a witness in the SPA.

As correctly observed by the investigating commissioner, all the aforementioned charges are not based on his personal knowledge of the acts complained of but acquired from other sources.

Complainant charges that respondent committed an act meriting disbarment when the latter caused to have a special power of attorney, which the former reused to sign earlier, executed by Mrs. Connie Kokseng, former

guardian of complainant and his co-heirs, authorizing certain individuals to secure the release from the Register of Deeds and other government offices in General Santos City, titles and other documents pertaining to complainant's and his co-heirs' homestead application. However, this charge is not based on his own personal knowledge of the acts complained of but acquired from another source. In other words, what he offered in evidence to prove his charge is a second-hand version. Complainant identified his source but failed to present any sworn statement or affidavit of said witness. In other words, what he presented in evidence to prove his charge is hearsay.[25]

The hearsay rule provides that no assertion offered as testimony can be received unless it is or has been open to test by cross-examination or an opportunity for cross-examination, except as provided otherwise by the rules on evidence, by rules of court, or by statute. The chief reasons for the rule are that out-of-court statements amounting to hearsay are not made under oath and are not subject to cross-examination.[26]

He did not submit to this Court or to the IBP any witness or documentary evidence to support his claim that respondent has indeed caused the execution of the disputed special power of attorney. Furthermore, complainant in his reply[27] to respondent's comment stated that he has a credible witness in the person of Edward U. Kokseng, son of Kokseng, who has first hand knowledge of Kokseng's signing of the SPA. However, he failed to present his witness before the IBP or submitted an affidavit of his witness to affirm his allegations. Neither did he present any witness, whether expert nor otherwise, to attest to the genuineness of the signature of respondent which was allegedly found in the SPA, if that was his objective.

This is not to say that complainant was not given any advice by the Court to make the proper attachment to pleadings. As early as 21 July 1999, Atty. Erlinda C. Versoza, the then Deputy Clerk of Court and Bar Confidant, sent word to complainant through a letter that complainant's letter-complaint must be verified and the supporting documents duly authenticated.[28]

As a basic rule in evidence, the burden of proof lies on the party who makes the allegations—*ei incumbit probatio, qui decit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit*.[29]

It is also worth noting that complainant's claim that he suffered damage and prejudice due to the alleged unauthorized procurement of the certificates of titles and other documents was not substantiated by independent evidence. Complainant's silence as to the extent of the alleged damage and the lack of material evidence to show that his rights were impaired by the acts of respondent would lead this Court to believe that complainant has suffered no or minimal injury, should there be any.

As held in *Metropolitan Bank and Trust Co. v. Tan*,[30] "no right of action is given where no injury is sustained. A wrongful violation of a legal right is not a sufficient element of a cause of action unless it has resulted in an injury causing loss or damage. There must be therefore, both wrongful violation and damages. The one without the other is not sufficient." [31]

Complainant made no statement on whether or not, at present, other persons who procured the certificates of title and other documents are still in possession of the same. He also has not stated the direct injury that was produced by the acts of respondent.

With all the foregoing, the Court finds that complainant did not overcome the presumption of innocence of respondent.

We need not dwell on the other factual issues of the case as it involves the presentation of concrete evidence that, sadly, complainant was not able to offer.

WHEREFORE, premises considered, the instant case against respondent is hereby DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo pp. 8-11.

[2] On 9 September 1999, complainant submitted his verified letter-complaint together with the authenticated annexes. Id. at 1-6.

[3] The rule states:

Rule 1.01.—A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[4] Rollo, pp. 32-39.

[5] Id. at 48.

[6] Id. at 119.

[7] Id. at 111-119.

[8] Id. at 122-123.

[9] Id. at 121.

[10] In accordance with the Court's ruling in *Halimao v. Villanueva*, 323 Phil. 1 (1996).

[11] On 21 January 2003, this Court received complainant's petition for review on certiorari questioning the report and recommendation of the investigating commissioner and the corresponding resolution of the IBP on the present administrative case. However, due to the pendency of the motion for reconsideration which was yet to be resolved by the IBP, the Court on 10 March 2003 denied the petition for being premature.

[12] Rollo, p. 111.

[13] The assailed resolution was received by complainant on 24 June 2004. Complainant filed through registered mail his petition for review on certiorari on 1 July 2004 and was received by this Court on 22 July 2004.

[14] Rollo, pp. 191-245.

[15] Id. at 88-89.

[16] The 9 October 1991 letter reads as follows:

...

Please be informed that the (scrawled) Lord Policy requires (scrawled) land applicants to file his homestead application with the Board of Liquidators to obtain a final award of the lot before the issuance of a Homestead Patent by the Department of Environment and Natural Resources.

It is well to inform your representatives have not been complying with the requirements needed to complete your land application.

In this regard, may we invite you to please come the soonest possible time to the Office of the Board of Liquidators, . . . ; Id. at 89.

[17] The letter of Rolando O. Ambrosio, the then general manager of the Board of Liquidators reads:

...

This refers to the letters dated August 5, 1992 and August 28, 1992 of Mr. Robert D. Santos, requesting the refund of the amount of P70,176.00 deposited under O.R. No. 1620882 dated November 29, 1990, by the heirs of Tirso Uytengsu, Jr. for Lot No. 924, Pls-209-D, Lagao General Santos City. It appears that Mr. Santos was appointed by one Ernesto R. Gonzales, who claims to be the Legal Counsel of the Heirs of Tirso Uytengsu, Jr. as his (sic) true and lawful attorney-in-fact. In a letter dated September 18, 1992, Atty. Joseph M. Baduel, who also claims to be the authorized representative of the Heirs of Tirso Uytengsu, Jr., requested that the request of Roberto D. Santos for the refund of the amount deposited by the said heirs be disregarded as they intend to continue with their application and to comply with all the requirements.

In view thereof, you are hereby directed to personally contact the Heirs of Tirso Uytengsu, Jr. in order to determine who, among the persons claiming to be their representative, is authorized by them and to require them to submit the letter of authorization. You are likewise directed to verify from the heirs whether they authorized the request made by Roberto D. Santos, for refund of their deposit or whether or not they will proceed with their application. . . .; Id. at 90.

[18] The 15 January 1993 letter reads:

. . .

Please find attached is the list of requirements which you promised to send us. We hope this branch office will receive them the soonest possible time so that appropriate action will be taken on your claim and the miscellaneous sales application will then be filed. . . .; Id. at 88.

[19] R. AGPALO, LEGAL ETHICS 234 (1997) citing Art., 1888, et seq., Civil Code of the Philippines.

[20] Ibid. citing Carrol v. Pratt, 247 Minn. 198, 76 NW2d 693; Brown v. Hebb, 175 A 602, 97s ALR 366 (1934).

[21] Adm. Case No. 3248, 18 September 1992, 214 SCRA 1, 14-15.

[22] Id. at 14-15.

[23] Valencia v. Cabanting, Adm. Case Nos. 1302, 1391 and 1543, 26 April 1991, 196 SCRA 302, 309 citing Santos v. Dichoso, 84 SCRA 622 and Camus v. Diaz, 170 SCRA 96.

[24] Melchor v. Gironella, G.R. No. 151138, 16 February 2005, 451 SCRA 476, 483 citing Artuz v. Court of Appeals, 365 SCRA 269 and Mariano v. Roxas, 385 SCRA 500.

[25] Rollo, pp. 117-118.

[26] BLACK'S LAW DICTIONARY 8[th] Ed. 739 (1999).

[27] Rollo, p. 44.

[28] The pertinent portion of the letter reads:

. . .

Please be informed that for the Court to take cognizance of an administrative case against the lawyer, a verified complaint should be filed nineteen (19) legible copies, together with supporting documents duly authenticated and/or affidavits of persons having personal knowledge of the facts alleged therein, in accordance with the Rules of Court.

If you intend to pursue disbarment proceedings against Atty. Baduel, kindly comply with the foregoing requirements. . . .; Id at 7.

[29] *Acabal v. Acabal*, G.R. 148376, 31 March 2005, 454 SCRA 555, 569.

[30] 226 Phil. 264 (1986).

[31] *Ibid.* citing 1 CJS 1005, pp. 271-272.

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