

BSA TOWER CONDOMINIUM CORPORATION, COMPLAINANT, V. ATTY. ALBERTO CELESTINO B. REYES II, RESPONDENT.

A.C. No. 11944 (Formerly CBD No. 12-3463). June 20, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

The extant case originated from a disbarment complaint which the complainant BSA Tower Condominium Corporation filed against respondent Atty. Alberto Celestino B. Reyes II.

The pertinent facts of the case are as follows:

Complainant BSA Tower Condominium Corporation alleged that it hired respondent Atty. Alberto Celestino B. Reyes II sometime in November 2005 to settle its real estate tax problems with the City of Makati. Between December 2006 and January 2007, Reyes obtained P25 million from BSA Tower, from which he may draw amounts for legitimate expenses in carrying out his official duties. However, out of the said amount, Reyes was only able to account for P5 million. This clearly violated Rule 16.01 of the Code of Professional Responsibility (CPR).

Also, on June 22, 2011, Reyes entered his appearance as counsel for the plaintiff in Civil Case 09-089 entitled *Marietta K. Ilusorio v. BSA Tower Condominium Corp. and Waldo Flores* before the Makati Regional Trial Court (RTC), Branch 62. Said case was an action for reimbursement of the amount of P500,000.00 which Ilusorio supposedly gave BSA Tower in advance for the payment of its electric and water bills. Later, Reyes took the witness stand and testified against BSA Tower. He likewise admitted that at the time Ilusorio's purported advances were made, he was BSA Tower's Corporate Secretary. Thus, on October 11, 2011, BSA Tower filed a Motion to Expunge the Testimony against Reyes. It contended that although the subject matter of the civil case involved information which Reyes had acquired by virtue of his former professional relationship with BSA Tower or about which he had been advising the company, he never obtained its written consent or waiver in the matter of him representing Ilusorio in said case. Accordingly, he violated Rules 15.03 and 21.02 of the CPR on conflict of interest.

On the other hand, Reyes denied the charges against him. He explained that when BSA Tower engaged his services, its liability stood at P31 million and the land was set to be sold at public auction. Their agreement was that Reyes would be paid 10% of whatever savings BSA Tower would generate through his efforts. Thereafter, BSA Tower's annual realty tax was reduced from P5 million to only P2 million per year beginning 2007. Reyes asserted that BSA Tower's total savings reached P21 million, apart from the amount of P25 million when the settlement was forged. However, BSA Tower never paid him his contingent fee. Hence, he filed a complaint with the Makati RTC to collect his fee, and the court later ordered BSA Tower to pay him the amount of P1,920,000.00, plus legal interest from January 2007, until fully paid.

As to his appearance as counsel for the plaintiff in Civil Case No. 09-089, Reyes claimed that he had asked BSA Tower's authorized representative if she or the corporation had any objection to his appearance as Ilusorio's

counsel. The representative said that she had none. Likewise, when he formally entered his appearance in said civil case, BSA Tower did not object. Yet, it later filed a Motion to Expunge his testimony. The court, however, denied said motion.

On June 13, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) recommended the dismissal of the disbarment complaint against Reyes, to wit:

WHEREFORE, in view of the foregoing, it is respectfully recommended that the disbarment complaint filed by complainant BSA Tower Condominium Corporation against respondent Atty. Alberto Celestino B. Reyes II be DISMISSED.

RESPECTFULLY SUBMITTED.[1]

On June 5, 2015, the IBP Board of Governors passed Resolution No. XXI-2015-377,[2] which adopted the aforementioned recommendation, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," finding the recommendation to be fully supported by the evidence on record and applicable laws. Thus, the case against Respondent is hereby DISMISSED.

Unfazed, BSA Tower filed a Motion for Reconsideration. On April 19, 2017, the IBP Board of Governors issued Resolution No. XXII-2017-968,[3] which provides:

RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendation of the IBP that the present disbarment complaint against Reyes must be dismissed.

In administrative proceedings, the burden of proof rests upon the complainant. For the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.[4]

BSA Tower claims that Reyes violated Rules 16.01, 15.03, and 21.02 of the CPR. Canon 16 and Rule 16.01 of the CPR provide:

CANON 1 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Rule 15.03, Canon 15 of the CPR provides:

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

While Rule 21.02, Canon 21 of the CPR states:

Rule 21.02 - A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

In *Aniñon v. Atty. Sabitsana, Jr.*,^[5] the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients. One of these tests is whether the acceptance of a new relation

would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Another test is whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[6]

On the matter of the alleged failure of Reyes to account for BSA Tower's funds, the Makati RTC, Branch 133 had ruled that BSA Tower is even the one that is liable to pay Reyes the amount of P1,920,000.00. With regard to the purported conflict of interest, the Makati RTC, Branch 146 had also ruled in favor of Reyes, saying that there was no conflict of interest in his appearance as counsel of Ilusorio. There was no convincing evidence that would show that, at the time that he was acting as Ilusorio's counsel, Reyes indeed used any confidential information that he had obtained from BSA Tower when he was still the corporation's Corporate Secretary. The dispute between Ilusorio and BSA Tower was contractual in nature such that his new relationship with Ilusorio would not require him to disclose matters obtained during his engagement as the Corporate Secretary or counsel of the corporation. Neither would his acceptance of Ilusorio as a new client prevent the full discharge of his duties as a lawyer or invite suspicion of double-dealing. In other words, the matters being put in issue by BSA Tower in this case had already been submitted for judicial resolution and the courts had decided against it. It seems, therefore, that the instant disbarment case against Reyes is just a mere attempt to bring the courts' rulings for an indirect review through an administrative case, which is an improper remedy. To rule that there is conflict of interest and that there is misappropriation of BSA Tower's funds would, in effect, reverse the rulings of the lower courts.

The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[7]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence – as opposed to preponderance of evidence – is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, disciplinary proceedings against lawyers are sui generis. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court motu proprio. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[8]

Here, BSA Tower seriously failed to discharge said burden of proof. The issues which BSA Tower presented in this case had already been submitted for judicial resolution and the courts had ruled in favor of Reyes. Hence, the Court finds that the acts of Reyes are not tantamount to a violation of any of the CPR provisions.

WHEREFORE, PREMISES CONSIDERED, the Court DISMISSES the instant Complaint against Atty. Alberto

Celestino B. Reyes II for utter lack of merit.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and Reyes, Jr., JJ., concur.

[1] Report and Recommendation submitted by Commissioner Michael G. Fabunan; rollo, pp. 136-142.

[2] Rollo, pp. 134-135.

[3] Id. at 132-133.

[4] *Villatuya v. Atty. Tabalingcos*, 690 Phil. 381, 396 (2012).

[5] 685 Phil. 322, 327 (2012).

[6] *Gimeno v. Atty. Zaide*, 759 Phil. 10, 21 (2015).

[7] *Aba, et al. v. De Guzman, et al.*, 678 Phil. 588, 600 (2011).

[8] *Reyes v. Atty. Nieva*, A.C. No. 8560, September 6, 2016, 802 SCRA 196, 220.

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