

NICANOR B. GATMAYTAN, JR., COMPLAINANT, VS. ATTY. ISIDRO C. ILAO, RESPONDENT.

A.C. NO. 6086. January 26, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

“The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons.”[1]

Before Us is an appeal of the Resolution[2] passed by the Board of Governors of the Integrated Bar of the Philippines which adopted and approved the Report and Recommendation[3] of Investigating Commissioner Milagros V. San Juan dated 04 April 2003, dismissing the complaint[4] for disbarment filed by Atty. Nicanor B. Gatmaytan, Jr., against Atty. Isidro C. Ilao for violations of Canons 8, 10, and 15 of the Code of Professional Responsibility.

THE FACTS

Complainant Nicanor B. Gatmaytan, Jr., is a practicing lawyer who represented a certain Teofista Payuran in Civil Case No. 4381-P before the Pasay City Regional Trial Court (RTC), Branch 109, for cancellation of title.[5] Respondent Atty. Isidro Ilao, on the other hand, was counsel for the respondents in the said case.

On 17 August 1995, complainant received the Decision[6] rendered in Civil Case No. 4381-P penned by Judge Lilia C. Lopez, the dispositive portion of which reads:

In view of all the foregoing, this Court hereby orders plaintiff Teofista Payuran to pay the defendants and third-party plaintiff Chiu Chin Siong as follows:

- P935,750.00 representing the total amount of rentals from January 16, 1976 to December 31, 1985. P485,418.75 representing the interest earned from the time they fell due up to December 31, 1986, and such amount representing the interest earned by the combined principal and interest from January 1, 1987 at the legal rate of 12% per annum until fully paid;
- The amount of P220,000.00 as attorney’s acceptance fee plus P500.00 per appearance and 20% of whatever amount the defendant third-party plaintiff may recover;
- For plaintiff Teofista Payuran, Atty. Augusto Gatmaytan and Pentel Merchandising Co., Inc., Quintin Lim Eng Seng and Quintin O. Lim to jointly and solidarily pay the sum of One Million (P1,000,000.00) pesos as moral damages and Two Hundred Thousand (P200,000.00) pesos as exemplary damages plus cost of suit.[7]

Thereafter, complainant, as counsel for Teofista Payuran, filed on 24 August 1995 a Motion for Reconsideration of the aforesaid decision, the denial of which was received by Atty. Gatmaytan on 24 October 1995. On 07 November 1995, complainant filed a second Motion for Reconsideration[8] which was subsequently denied, the notice thereof received on 26 December 1995. Consequently, on 08 January 1996, complainant, as counsel, filed a

notice of appeal before the court a quo. Said notice of appeal was however denied due course on the ground that the appeal was already time-barred. Thereupon, complainant, on behalf of Teofista Payuran, filed a Petition for Certiorari and Mandamus[9] before the Court of Appeals.

On 14 February 2002, during the pendency of the Petition for Certiorari, Atty. Ilao, as counsel for Clifton Chiu,[10] filed before this Court a Complaint for Disbarment[11] against herein complainant, Atty. Nicanor Gatmaytan, Jr., for violations of Canons 10, 12, 15, and 19 of the Code of Professional Responsibility. On 07 March 2002, Atty. Ilao, in his personal capacity and as attorney-in-fact of his co-plaintiffs,[12] filed a complaint for damages in the RTC of Nasugbu, Batangas, Branch 14, against herein complainant, Teofista Payuran and Atty. Augusto Gatmaytan.

On 05 August 2002, herein complainant Atty. Gatmaytan, filed his own Complaint for Disbarment before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) against Atty. Ilao. Atty. Gatmaytan claims that by filing the complaint for damages before the RTC of Nasugbu, respondent is guilty of making false representations and advice to his clients, as well as committing falsehood, misleading the court and misusing the Rules of Procedure.

It is this disbarment case against Atty. Ilao which is the subject matter of herein disquisition.

After submission of the necessary pleadings, Commissioner Milagros V. San Juan, on 04 April 2003, issued her Report and Recommendation[13] recommending the dismissal of Atty. Gatmaytan's complaint for lack of merit. On 26 April 2003, Resolution No. XV-2003-211[14] was passed by the Board of Governors of the IBP, which adopted and approved the report and recommendation of the Investigating Commissioner, and hence, the dismissal of the disbarment case. On 10 July 2003, complainant filed a Motion for Reconsideration assailing the dismissal of the complaint without the Commissioner conducting an investigation. The Board of Governors of the IBP, having already endorsed the matter to the Supreme Court in accordance with Section 12(c) of Rule 139-B of the Rules of Court, hence, no longer exercising jurisdiction over it, denied said Motion for Reconsideration in a resolution[15] dated 30 August 2003. Nevertheless, the Court, in a resolution dated 12 January 2004, resolved to treat complainant's Motion for Reconsideration as an appeal to the Supreme Court of the earlier resolution[16] of the IBP. Hence, the instant appeal.

THE ISSUE

In his appeal, the sole issue complainant raises is the absence of an investigation conducted in connection with the resolution of his complaint for disbarment. He asserts that instead of dismissing outright the complaint for lack of merit, Commissioner San Juan should have conducted an investigation of the charged violations of the Canons of Professional Responsibility by respondent pursuant to Rule 139-B, Section 8 of the Rules of Court.

RULING OF THE COURT

To properly address the issue raised by complainant, we must analyze Section 8 of Rule 139-B in relation to the pertinent section contained in said Rule -- Section 5 of Rule 139-B. They provide, thus:

SEC. 5. Service or dismissal. – If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation. . . . [Emphasis ours]

SEC. 8. Investigation. – Upon joinder of issues or upon failure of the respondent to answer, the Investigator

shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on behalf, and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte. . . .

Quite clearly, the above provisions plainly show two (2) modes of initiatory actions that the Investigator is empowered to take upon the complaint – either dismiss the same without delay or proceed with the investigation. Perforce:

A) The Investigator shall proceed with the investigation of the case:

1) if the complaint appears to be meritorious; or

2) upon joinder of the issues (upon submission of the answer by respondent within fifteen [15] days from the date of service), when the answer shows that the complaint is indeed meritorious; or

3) if respondent fails to answer.

B) On the other hand, the investigator may recommend the dismissal of the same:

1) if the complaint lacks merit; or

2) if the answer shows, to the satisfaction of the Investigator, that the complaint is not meritorious.

Verily, it is within the sound discretion of the Investigator to determine whether or not the complaint is meritorious and if an investigation must indeed ensue.

In the case at bar, Commissioner San Juan did not see the need to conduct an investigation because, to her mind, the instances when an investigation shall push through did not arise. Respondent Atty. Ilao did submit his answer to the complaint and after the exchange of pleadings between the parties, the Commissioner made the determination that the complaint does not merit action and must therefore be dismissed. We quote, with approval, the ratiocination of Commissioner San Juan in reaching the conclusion to dismiss the case:

A perusal of the Complaint for Damages (Civil Case No. 684) filed by herein respondent and his co-plaintiffs against Teofista Payuran and Attys. Nicanor Gatmaytan, Jr. and Augusto Gatmaytan, will readily show that said complaint was filed precisely because CA-G.R. SP No. 41717 was filed by Teofista Payuran with the assistance of herein complainant Atty. Nicanor Gatmaytan, Jr. The pertinent allegations of the said Complaint for Damages read as follows:

...11. As a direct result of the filing of the said unfounded and baseless petition for Certiorari and Mandamus, the auction sale of the levied properties which was held at Cavity City on August 30, 1996, and despite the fact that a Certificate of Sale has had already been duly executed by the sheriff, the same could not be approved by the Honorable Trial Court and hence, the same could not be registered and for which reason the redemption period has not yet started which, has it not been for the filing of the said petition, the redemption period should have been within the month of September 1997 wherein One US Dollar was costing about x x x P32.3945 Pesos, but now the ratio of One Dollar is more that Fifty Pesos x x x, thereby at this point in time, plaintiffs had already suffered a loss in the purchasing power which may not be less than Two Million Pesos . . .

Whether or not there is merit to respondent's and his co-plaintiffs' claim for damages in Civil Case No. 684 is not relevant to the instant case. As herein complainant himself pointed out, the right to litigate is guaranteed by the Constitution and no less than the Supreme Court itself in "R&B Surety and Insurance Co. v. IAC," 129 SCRA 736 stated that:

The adverse result of an action does not per se make the action wrongful and subject the actor to the payment of damages, for the law could not have meant to impose a penalty on the right to litigate. Sound principles of

justice and public policy demand that the persons shall have free resort to the courts of law for redress and vindication of their rights without fear of later on standing trial for damages should their actions lose ground.

Regarding complainant's contention that the filing of Civil Case No. 684 with the Regional Trial Court of Nasugbu, Batangas was intended to harass the defendants in said case because said case could have been filed with the courts in Parañaque, Metro Manila, is likewise without merit. It was expressly stated in said Complaint for Damages that one of the plaintiffs in said case, herein respondent, was a resident of Nasugbu, Batangas. Since under the Rules of Court, venue may be the residence of the defendants or of the plaintiffs, at the option of the plaintiffs, Civil Case No. 684 was properly filed in Batangas, the residence of herein respondent.[17]

The Court, in the case of *Estrella Real Estate Corporation v. Court of Appeals*,[18] has enunciated that in the absence of any showing that the findings complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand. Consequently, absent a showing that there is grave abuse of discretion in dismissing the complaint, the Court must give credence to the findings and recommendation of the Investigating Commissioner and the Board of Governors of the IBP that the complaint must be dismissed for lack of merit.

Evidently, complainant is belaboring under a misapprehension of Rule 139-B of the Rules of Court. To the extent of being repetitive, it is only when the complaint bears merit, or when the answer fails to show that the complaint indeed lacks merit, or when respondent fails to file an answer that an investigation shall proceed. Otherwise, if the complaint is bereft of merit, either on its face or as proven by respondent's answer, it will be unjust to mandate the Investigator to conduct an investigation.

For failure to establish that respondent Atty. Ilao made false representations and advice to his clients, committed falsehood, misled the court, and misused the Rules of Procedure in violation of the Canons of the Code of Professional Responsibility, the Resolution of the IBP dismissing the complaint must be upheld.

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Resolution of the Integrated Bar of the Philippines dated 26 April 2003 is hereby AFFIRMED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur..
Callejo, Sr., J., on official leave.

[1] *De Guzman v. Tadeo*, 68 Phil. 554 (1939).

[2] Resolution No. XV-2003-211, 26 April 2003; Rollo, p. 98.

[3] Rollo, pp. 99-109.

[4] Filed before the Commission on Bar Discipline on 05 August 2002; Rollo, pp. 1-5.

[5] See Annex A of the Complaint, Rollo, pp. 7-31.

[6] Rollo, pp. 32-43.

[7] Rollo, pp. 42-43.

[8] In violation of Rule 37, Sec. 5, par. 2 of the Rules of Court which states: "No party shall be allowed a second motion for reconsideration of a judgment or final order."

[9] CA-G.R. SP No. 41717.

[10] One of the Respondents in Civil Case No. 4381-P.

[11] Rollo, pp. 66-71.

[12] Respondents in Civil Case No. 4381-P namely: Cham Man Ley, Clifton Chiu, Mercy O. Chiu, Winston Chiu, Marilyn Chiu-Maningas, and Noel Maningas.

[13] Rollo, pp. 99-109.

[14] Rollo, p. 98.

[15] Resolution No. XVI-2003-115; Rollo, p. 111.

[16] Id.

[17] Rollo, pp. 106-109.

[18] G.R. No. 128862, 30 September 1999, 315 SCRA 650, 657.

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