

SONIC STEEL INDUSTRIES, INC., COMPLAINANT, VS. ATTY. NONNATUS P. CHUA, RESPONDENT.

A.C. No. 6942. July 17, 2013

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a complaint for disbarment filed by complainant Sonic Steel Industries, Inc. against respondent, Atty. Nonnatus P. Chua.

The facts follow.

Complainant is a corporation doing business as a manufacturer and distributor of zinc and aluminum-zinc coated metal sheets known in the market as Superzinc and Superlume. On the other hand, respondent is the Vice-President, Corporate Legal Counsel and Assistant Corporate Secretary of Steel Corporation (STEELCORP).

The controversy arose when, on September 5, 2005, STEELCORP, with the assistance of the National Bureau of Investigation, applied for and was granted by the Regional Trial Court (RTC) of Cavite City, Branch 17, a Search Warrant directed against complainant.

On the strength of the search warrant, complainant's factory was searched and, consequently, properties were seized. A week after, STEELCORP filed before the Department of Justice a complaint for violation of Section 168, in relation to Section 170, of Republic Act No. 8293[1] against complainant and the latter's officers.

Based on three documents, to wit: (1) the Affidavit of Mr. Antonio Lorenzana (Executive Vice-President of STEELCORP), in support of the application for the Search Warrant; (2) the exchange between Mr. Lorenzana and Judge Melchor Sadang of Branch 17, RTC of Cavite, during the searching inquiry conducted by the latter for the application for warrant, as evidenced by the Transcript of Stenographic Notes (TSN) dated September 5, 2005 in *People v. John Doe a.k.a. Anthony Ong, et al.*; and (3) the Complaint-Affidavit executed by respondent and filed before the Department of Justice, complainant asserts that respondent performed the ensuing acts:

(a)

In stating that STEELCORP is the exclusive licensee of Philippine Patent No. 16269, respondent deliberately misled the court as well as the Department of Justice, because Letters Patent No. 16269 have already lapsed, making it part of the public domain.

(b)

In refusing to provide the RTC of Cavite City, Branch 17 a copy of the patent, respondent intentionally deceived said court because even the first page of the patent will clearly show that said patent already lapsed. It appears that Letters Patent No. 16269 was issued on August 25, 1983 and therefore had already lapsed rendering it part of the public domain as early as 2000. Had respondent shown a copy of the patent to the judge, said judge would not have been misled into issuing the search warrant because any person would know that a patent has a lifetime of 17 years under the old law and 20 years under R.A. 8293. Either way, it is

apparent from the face of the patent that it is already a lapsed patent and therefore cannot be made basis for a supposed case of infringement more so as basis for the application for the issuance of a search warrant.

In the affidavit submitted by Mr. Antonio Lorenzana, complainant asserts that the same includes statements expressing that STEELCORP is the licensee of Philippine Patent No. 16269, to wit:

2. STEELCORP is the exclusive licensee of and manufacturer in the Philippines of “GALVALUME” metal sheet products, which are coated with aluminum-zinc alloy, produced by using the technical information and the patent on Hot Dip Coating of Ferrous Strands with Patent Registration No. 16269 issued by the Philippine Intellectual Property Office (“IPO”), a process licensed by BIEC International, Inc. to STEELCORP for the amount of over Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000.00).

x x x x

7. Specifically, the acts committed by RESPONDENTS of storing, selling, retailing, distributing, importing, dealing with or otherwise disposing of “SUPERLUME” metal sheet products which are similarly coated with aluminum-zinc alloy and cannot be produced without utilizing the same basic technical information and the registered patent used by STEELCORP to manufacture “GALVALUME” metal sheet products, the entire process of which has been lawfully and exclusively licensed to STEELCORP by BIEC International, Inc., constitute unfair competition in that –

x x x x

b. While SUPERLUME metal sheets have the same general appearance as those of GALVALUME metal sheets which are similarly coated with aluminum-zinc alloy, produced by using the same technical information and the aforementioned registered patent exclusively licensed to and manufactured in the Philippines since 1999 by STEELCORP, the machinery and process for the production of SUPERLUME metal sheet products were not installed and formulated with the technical expertise of BIEC International, Inc. to enable the SONIC to achieve the optimum results in the production of aluminum-zinc alloy-coated metal sheets;

x x x x

8. On the [bases] of the foregoing analyses of the features and characteristics of RESPONDENTS’ SUPERLUME metal sheet products, the process by which they are manufactured and produced certainly involves an assembly line that substantially conforms with the technical information and registered patent licensed to STEELCORP, which should include, but are not limited to, the following major components and specifications, viz.:

x x x x

9. It is plain from the physical appearance and features of the metal sheets which are coated with aluminum-zinc alloy and produced by using the technical information and the registered patent exclusively licensed to STEELCORP by BIEC International, Inc.; the mark ending with the identical syllable “LUME” to emphasize its major component (i.e., aluminum) which is used in Respondents’ “SUPERLUME” metal sheets while having the same general appearance of STEELCORP’s genuine “GALVALUME” metal sheets, that the intention of RESPONDENTS is to cash in on the goodwill of STEELCORP by passing off its “SUPERLUME” metal sheet products as those of STEELCORP’s “GALVALUME” metal sheet products, which increases the inducement of the ordinary customer to buy the deceptively manufactured and unauthorized production of “SUPERLUME” metal sheet products.

x x x x

11. STEELCORP has lost and will continue to lose substantial revenues and will sustain damages as a result of the wrongful conduct of RESPONDENTS and their deceptive use of the technical information and registered

patent, exclusively licensed to STEELCORP, as well as the other features of their SUPERLUME metal sheets, that have the same general appearance as the genuine GALVALUME metal sheets of STEELCORP. The conduct of RESPONDENTS has also deprived and will continue to deprive STEELCORP of opportunities to expand its goodwill.[2]

Also, in the searching questions of Judge Melchor Sadang of the RTC of Cavite City, Branch 17, complainant asserts that respondent deliberately misled and intentionally deceived the court in refusing to provide a copy of Philippine Patent No. 16269 during the hearing for the application for a search warrant, to wit:

[COURT to Mr. Lorenzana]

Q: You stated here in your affidavit that you are the Executive Vice-President of Steel Corporation of the Philippines. Is that correct?

A: Yes sir.

Q: You also state that Steel Corporation owns a patent exclusively licensed to Steel Corporation by BIEC International, Inc. Do you have document to show that?

ATTY. CHUA: We reserve the presentation of the trademark license, your Honor.

Q: Why are you applying a search warrant against the respondent Sonic Steel Industries?

A: We will know that Sonic is not licensed to produce that product coming from the technology which is exclusively licensed to our Company, your Honor. We know that from our own knowledge. Also, the investigation of the NBI confirms further that the product has already been in the market for quite some time. As a product, it has the same feature and characteristic as that of GALVALUME, your Honor.

Q: In other words, you are not saying that Sonic is using the trademark GALVALUME but only using the technology of the process which is only licensed to Steel Corporation. Is that correct?

A: Yes, your Honor.

x x x x

Court to Lorenzana:

Q: The patent on the Hot Dip Coating of Ferrous Strands, do you have a document regarding that?

A: Yes, your Honor. It is in the office.

ATTY. CHUA: We reserve the right to present it, your Honor.

Court:

Q: You stated a while ago that it is the Steel Corporation that has been licensed by the BIEC International to manufacture sheet products which are coated with aluminum-zinc alloy. Is that correct?

A: Yes, your Honor.[3]

Subsequently, respondent initiated a complaint for violation of Section 168 of Republic Act No. 8293 against complainant, as well as its officers, before the Department of Justice. In his complaint-affidavit, respondent stated that STEELCORP is the exclusive licensee of Philippine Patent No. 16269 on Hot Dip Coating of Ferrous Strands which was allegedly violated by complainant. Thus:

2. STEELCORP is the exclusive licensee and manufacturer in the Philippines of “GALVALUME” metal sheet products, which are coated with aluminum-zinc alloy, produced by using the technical information and the

patent on Hot Dip Coating of Ferrous Strands with Patent Registration No. 16269, issued by the Philippine Intellectual Property Office (“IPO”), a process licensed by BIEC International, Inc. to STEELCORP for the amount of over Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000.00).

x x x x

13. x x x x

b. While SUPERLUME metal sheets have the same general appearance as those of GALVALUME metal sheets which are similarly coated with aluminum-zinc alloy, produced by using the same technical information and the aforementioned registered patent exclusively licensed to and manufactured in the Philippines since 1999 by STEELCORP, the machinery and process for the production of SUPERLUME metal sheet products were not installed and formulated with the technical expertise of BIEC International, Inc. to enable SONIC to achieve the optimum results in the production of aluminum-zinc alloy-coated metal sheets;

x x x x

15. The natural, probable and foreseeable result of RESPONDENTS’ conduct is to continue to deprive STEELCORP of the exclusive benefits of using the technical information and patent for the manufacture and distribution of aluminum-zinc alloy-coated metal sheet products, deprive STEELCORP of sales and goodwill, and continue to injure STEELCORP’s relations with present and prospective customers.

16. STEELCORP has lost and will continue to lose substantial revenues and will sustain damages as a result of the wrongful conduct by RESPONDENTS and their deceptive use the technical information and patent, exclusively licensed by BIEC International, Inc. to STEELCORP, used and/or intended to be used by RESPONDENTS for the manufacture, retail, dealings with or otherwise disposals of unauthorized SUPERLUME aluminum-zinc alloy-coated metal sheet products, as well as the other features of its product, having the same general appearance and characteristics as those of the genuine GALVALUME aluminum-zinc alloy-coated metal sheet products. RESPONDENTS’ conduct has also deprived STEELCORP and will continue to deprive STEELCORP of opportunities to expand its goodwill.[4]

For his part, respondent counters that he never made an allegation or reservation that STEELCORP owned Philippine Patent No. 16269. He asserts that he merely reserved the right to present the trademark license exclusively licensed to STEELCORP by BIEC International, Inc. which is composed of the technical information and the patent used to produce GALVALUME metal sheet products, the same technology being utilized by complainant without authority from STEELCORP.

Respondent further avers that the Complaint-Affidavit filed before the Department of Justice did not categorically claim that STEELCORP is the owner of the patent, but simply that STEELCORP is the exclusive licensee of the process by which GALVALUME is produced.

The complaint was then referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In its Report and Recommendation dated July 10, 2007, the IBP’s Commission on Bar Discipline resolved to suspend respondent from the practice of law for three (3) months with admonition that a repetition of the same or similar act in the future will be dealt with more severely.

On August 17, 2007, the IBP Board of Governors passed Resolution No. XVIII-2007-76 wherein it resolved to adopt and approve the Report and Recommendation of the Investigating Officer of the Commission on Bar Discipline, with the modification that respondent is suspended from the practice of law for six (6) months.

Unfazed, respondent filed a Motion for Reconsideration against said Resolution, but the same was denied on

January 14, 2012.

Accordingly, the Resolution, together with the records of the case, was transmitted to this Court for final action.

We affirm in toto the findings and recommendations of the IBP.

Pertinent provisions in the Code of Professional Responsibility state:

Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal process.

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

x x x x

Canon 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall do no falsehood, nor consent to the doing of any in Court, nor shall he mislead or allow the Court to be misled by an artifice.

Lawyers are officers of the court, called upon to assist in the administration of justice. They act as vanguards of our legal system, protecting and upholding truth and the rule of law. They are expected to act with honesty in all their dealings, especially with the court. Verily, the Code of Professional Responsibility enjoins lawyers from committing or consenting to any falsehood in court or from allowing the courts to be misled by any artifice. Moreover, they are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.[5]

In the present case, it appears that respondent claimed or made to appear that STEELCORP was the licensee of the technical information and the patent on Hot Dip Coating of Ferrous Strands or Philippine Patent No. 16269. However, an extensive investigation made by the IBP's Commission on Bar Discipline showed that STEELCORP only has rights as a licensee of the technical information and not the rights as a licensee of the patent, viz.:

x x x In respondent's words and crafted explanation, he claimed that STEELCORP had rights as a licensee of the process, consisting of a combination of the Technical Information and the Patent. Considering, however, that STEELCORP's rights as a licensee of the process is severable into (a) rights as licensee of the technical information and (b) rights as a licensee of Patent No. 16269, respondent was less than candid in asserting that STEELCORP had rights to the entire process during the relevant periods, as will be explained below.

Under the TECHNICAL INFORMATION AND PATENT LICENSE AGREEMENT between STEELCORP and BIEC International, Inc., the terms "technical information" and "patent" are separate and distinct. Thus, technical information is defined under such contract as "Licensor's existing proprietary data, know-how and technical information which relates to the subject of Sheet and/or Strip coated with an aluminum-zinc alloy xxx and to facilities and equipment for the manufacture and use thereof and to data, know-how and technical information applicable thereto as of the Effective Date xxxx." On the other hand, Licensed Patent is defined therein as "Patent No. 16269" entitled "Hot dip coating of ferrous strands." The combination of such proprietary data, know-how and the patent on Hot Dip Coating of Ferrous Strands is the process over which STEELCORP claims it had proprietary license, and represents the same process used by STEELCORP in producing GALVALUME products. This is supposedly the basis upon which STEELCORP (through Mr. Lorenzana in his Affidavit in support of the application for a search warrant, presumably under the direction of respondent) and respondent (in his Complaint-Affidavit before the Department of Justice) asserted then that it was the exclusive licensee of the technical information and registered Patent No. 16269.

However, from the time that STEELCORP applied for a search warrant over SONIC STEEL's premises

(through the affidavit of Mr. Lorenzana and presumably with respondent's strategy as counsel), Patent No. 16269 had long expired. This fact is crucial in that the license STEELCORP had, as claimed by respondent, was over the entire process and not just the technical information as a component thereof. Accordingly, when the application for search was filed and when respondent subscribed to his Complaint-Affidavit before the Department of Justice, STEELCORP had no more exclusive license to Patent No. 16269. Said patent had already become free for anyone's use, including SONIC STEEL. All that STEELCORP possessed during those times was the residual right to use (even if exclusively) just the technical information defined in its agreement with BIEC International, Inc. STEELCORP had only an incomplete license over the process. The expiration of the patent effectively negated and rendered irrelevant respondent's defense of subsistence of the contract between STEELCORP and BIEC International, Inc. during the filing of the application for search warrant and filing of respondent's affidavit before the Department of justice. There is basis, therefore, to the claim that respondent has not been "candid enough" in his actuations.

It would also appear that respondent was wanting in candor as regards his dealings with the lower court. The interjection made by respondent during Judge Sadang's (Branch 17, Regional Trial Court of Cavite) searching examination of Mr. Lorenzana illustrates this, viz.:

Q: You also state here that Steel Corporation owns a patent exclusively licensed to Steel Corporation by BIEC International, Inc. Do you have a document to show that?

ATTY. CHUA: We reserve the presentation of the trademark license, your Honor.

x x x x x x x x

Q: The patent on the Hot Dip Coating of Ferrous Strands, do you have a document regarding that?

A: Yes, your Honor. It is in the office.

ATTY. CHUA: We reserve the right to present it, your Honor.

It is worth underscoring that although Judge Sadang addressed his questions solely to Mr. Lorenzana, respondent was conveniently quick to interrupt and manifest his client's reservation to present the trademark license. Respondent was equally swift to end Judge Sadang's inquiry over the patent by reserving the right to present the same at another time. While it is not the Commission's province to dwell with suppositions and hypotheses, it is well within its powers to make reasonable inferences from established facts. Given that Patent No. 16269 had been in expiry for more than five (5) years when Judge Sadang propounded his questions, it logically appears that respondent, in making such reservations in open court, was trying to conceal from the former the fact of the patent's expiration so as to facilitate the grant of the search warrant in favor of STEELCORP. This is contrary to the exacting standards of conduct required from a member of the Bar.

Indeed, the practice of law is not a right but merely a privilege bestowed upon by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. One of those requirements is the observance of honesty and candor. Candor in all their dealings is the very essence of a practitioner's honorable membership in the legal profession. Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of litigation and in their relations with their clients, the opposing parties, the other counsels and the courts. They are bound by their oath to speak the truth and to conduct themselves according to the best of their knowledge and discretion, and with fidelity to the courts and their clients.[6]

From the foregoing, it is clear that respondent violated his duties as a lawyer to avoid dishonest and deceitful conduct, (Rule 1.01, Canon 1) and to act with candor, fairness and good faith (Rule 10.01, Canon 10). Also, respondent desecrated the solemn oath he took before this Court when he sought admission to the bar, i.e., not to

do any falsehood nor consent to the doing of any in Court. Thus, even at the risk of jeopardizing the probability of prevailing on STEELCORP's application for a search warrant, respondent should have informed the court of the patent's expiration so as to allow the latter to make an informed decision given all available and pertinent facts.

WHEREFORE, premises considered, respondent Atty. Nonnatus P. Chua is hereby **SUSPENDED** from the practice of law for six (6) months with **ADMONITION** that a repetition of the same or similar act in the future will be dealt with more severely.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Leonen, JJ., concur.

July 23, 2013

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____July 17, 2013____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 23, 2013 at 10:45 a.m.

Very truly yours,

(SGD)

LUCITA ABJELINA SORIANO

Division Clerk of Court

[1] An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and For Other Purposes.

[2] Rollo, pp. 20-23. (Emphasis and underscoring supplied)

[3] Id. at 103-127. (Emphasis and underscoring supplied)

[4] Id. at 191-195. (Underscoring supplied)

[5] Plus Builders, Inc. v. Revilla, Jr., 533 Phil. 250, 259 (2006).

[6] Yap-Paras v. Paras, 491 Phil. 382, 390-391 (2005). (Citations omitted)

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