

ATTY. RICARDO M. SALOMON, JR., COMPLAINANT, VS. ATTY. JOSELITO C. FRIAL, RESPONDENT.

A.C. No. 7820. September 12, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In his sworn complaint^[1] filed before the Integrated Bar of the Philippines (IBP) on December 22, 2006, complainant Atty. Ricardo M. Salomon, Jr. charged respondent Atty. Joselito C. Frial with violating his Lawyer's Oath and/or gross misconduct arising from his actuations with respect to two attached vehicles. Complainant, owner of the vehicles in question, asked that Atty. Frial be disbarred.

The instant complaint has its beginning in the case, *Lucy Lo v. Ricardo Salomon et al.*, docketed as Civil Case No. 05-111825 before the Regional Trial Court in Manila, in which a writ of preliminary attachment was issued in favor of Lucy Lo, Atty. Frial's client. The writ was used to attach two (2) cars of complainant — a black 1995 Volvo and a green 1993 Nissan Sentra.

According to Atty. Salomon, the attaching sheriff of Manila, instead of depositing the attached cars in the court premises, turned them over to Atty. Frial, Lo's counsel. Atty. Salomon claimed that on several occasions, the Nissan Sentra was spotted being used by unauthorized individuals. For instance, on December 26, 2005, barangay captain Andrew Abundo saw the Nissan Sentra in front of a battery shop on Anonas St., Quezon City. On February 18, 2006, Architect Roberto S. Perez and three others saw and took video and photo shots of the same car while in the Manresa Shell station at P. Tuazon Blvd. corner 20th Avenue, Quezon City. Also sometime in June 2006, Robert M. Perez, complainant's driver, saw the said car in another Shell station near Kamias Street. On December 16, 2006, Arlene Carmela M. Salomon spotted it driven by bondsman Ferdinand Liquigan allegedly with Atty. Frial's consent. As Atty. Salomon further alleged, when the misuse of the car was reported, paving for Liquigan's apprehension, Atty. Frial, in a letter, acknowledged having authorized Liquigan to bring the car in custodia legis to a mechanic.

As to the Volvo, Atty. Salomon averred that during mediation, Atty. Frial deliberately withheld information as to its whereabouts. As it turned out later, the Volvo was totally destroyed by fire, but the court was not immediately put on notice of this development.

In his Answer,^[2] Atty. Frial admitted taking custody of the cars thru his own undertaking, without authority and knowledge of the court. The subject vehicles, according to him, were first parked near the YMCA building in front of the Manila City Hall where they remained for four months. He said that when he went to check on the vehicles' condition sometime in December 2005, he found them to have been infested and the wirings underneath the hoods gnawed by rats. He denied personally using or allowing others the use of the cars, stating in this regard that if indeed the Nissan Sentra was spotted on Anonas St., Quezon City on December 26, 2005, it could have been the time when the car was being transferred from the YMCA. The February 18, 2006 and June 2006 sightings, so Atty. Frial claimed, possibly occurred when the Nissan Sentra was brought to the gas station to be

filled up. He said that the car could not have plausibly been spotted in Project 3 on December 13, 2006, parked as it was then in front of Liquigan's house for mechanical check-up.

During the mandatory conference/hearing before the IBP Commission on Bar Discipline, the parties agreed on the following key issues to be resolved: (1) whether or not Atty. Frial used the cars for his personal benefit; and (2) whether or not Atty. Frial was guilty of infidelity in the custody of the attached properties.

Thereafter and after the submission by the parties of their respective position papers, the Commission submitted a Report dated October 9, 2007 which the IBP Board of Governors forthwith adopted and then transmitted to this Court. In the Report, the following were deduced from the affidavits of Andrew Abundo, Roberto Perez, Robert Perez, and Dante Batingan: (1) at no time was Atty. Frial seen driving the Sentra; (2) Abundo learned that at that time the car was spotted at the battery shop, the unnamed driver bought a new battery for the car which was not inappropriate since a battery was for the preservation of the car; (3) Atty. Frial admitted that the Nissan Sentra was seen gassed up on February 18, 2006 and in June 2006 and there was no reason to gas up the Nissan Sentra on those times unless it was being used; (4) Roberto Perez said the Nissan Sentra was used to buy goat's meat; and (5) photos of the Nissan Sentra in different places obviously showed it was being used by others.

In the same Report, the Commission observed that while there is perhaps no direct evidence tying up Atty. Frial with the use of the Nissan Sentra, the unyielding fact remains that it was being used by other persons during the time he was supposed to have custody of it. In addition, whoever drove the Nissan Sentra on those occasions must have received the car key from Atty. Frial. When Atty. Frial took custody of the Nissan Sentra and Volvo cars, he was duty bound to keep and preserve these in the same condition he received them so as to fetch a good price should the vehicles be auctioned.

As to the burnt Volvo, Atty. Frial admitted receiving it in excellent condition and that there was no court order authorizing him to remove the car from the YMCA premises. Admitted too was the fact that he secured the release of the Volvo on the strength alone of his own written undertaking;^[3] and that the car was almost totally destroyed by fire on February 4, 2006 at 1:45 a.m.^[4] while parked in his residence. He could not, however, explain the circumstances behind the destruction, but admitted not reporting the burning to the court or the sheriff. While the burning of the car happened before the mediation hearing, Atty. Frial, upon inquiry of Atty. Salomon, did not give information as to the whereabouts of the cars.

The destruction of the Volvo in Atty. Frial's residence was not an ordinary occurrence; it was an event that could have not easily escaped his attention. Accordingly, there is a strong reason to believe that Atty. Frial deliberately concealed the destruction of said vehicle from the court during the hearings in Civil Case No. 05-111828, which were the opportune times to reveal the condition of the Volvo car.

On the basis of the foregoing premises, the Commission concluded that Atty. Frial committed acts clearly bearing on his integrity as a lawyer, adding that he failed to observe the diligence required of him as custodian of the cars. The Commission thus recommended that Atty. Frial be suspended from the practice of law for one (1) year.

The findings and the recommendation of the Commission are well-taken.

A writ of attachment issues to prevent the defendant from disposing of the attached property, thus securing the satisfaction of any judgment that may be recovered by the plaintiff or any proper party.^[5] When the objects of the attachment are destroyed, then the attached properties would necessarily be of no value and the attachment would be for naught.

From the evidence adduced during the investigation, there is no question that Atty. Frial is guilty of grave misconduct arising from his violation of Canon 11 of the Canons of Professional Ethics that states:

- Dealing with trust property

The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him. (Emphasis ours.)

A lawyer is first and foremost an officer of the court. As such, he is expected to respect the court's order and processes. Atty. Frial miserably fell short of his duties as such officer. He trifled with the writ of attachment the court issued.

Very patently, Atty. Frial was remiss in his obligation of taking good care of the attached cars. He also allowed the use of the Nissan Sentra car by persons who had no business using it. He did not inform the court or at least the sheriff of the destruction of the Volvo car. What is worse is that he took custody of them without so much as informing the court, let alone securing, its authority.

For his negligence and unauthorized possession of the cars, we find Atty. Frial guilty of infidelity in the custody of the attached cars and grave misconduct. We must mention, at this juncture, that the victorious parties in the case are not without legal recourse in recovering the Volvo's value from Atty. Frial should they desire to do so.

The Court, nevertheless, is not inclined to impose, as complainant urges, the ultimate penalty of disbarment. The rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and moral character of a lawyer as an officer of the court and member of the bar.[6] With the view we take of the case, there is no compelling evidence tending to show that Atty. Frial intended to pervert the administration of justice for some dishonest purpose.

Disbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired.[7] This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person. In the case of Atty. Frial, the Court finds that a year's suspension from the practice of his legal profession will provide him with enough time to ponder on and cleanse himself of his misconduct.

WHEREFORE, Atty. Joselito C. Frial is adjudged guilty of grave misconduct and infidelity in the custody of properties in custodia legis. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year effective upon his receipt of this Decision. Let notice of this Decision be entered in his personal record as an attorney with the Office of the Bar Confidant and notice of the same served on the IBP and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, pp. 1-5. Attached to the complaint are the affidavits of Andrew Abundo, Roberto Perez, Robert Perez, and Dante Batingan and photocopies of the disputed vehicles.

[2] Id. at 61-63.

[3] Id. at 44.

[4] Id. at 30.

[5] Olib v. Pastoral, G.R. No. 81120, August 20, 1990, 188 SCRA 692, 699.

[6] Saquing v. Mora, A.C. No. 6678, October 9, 2006, 504 SCRA 1, 7; Bantolo v. Castillon, Jr., A.C. No. 6589, December 19, 2005, 478 SCRA 443, 449.

[7] Saquing, supra.

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