

WILHELMINA C. VIRGO, COMPLAINANT, VS. ATTY. OLIVER V. AMORIN, RESPONDENT.*A.C. No. 7861 (CBD Case No. 06-1829). January 30, 2009*

Ponente: AUSTRIA-MARTINEZ, J.

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Before the Court is a Petition filed by Atty. Oliver V. Amorin (Atty. Amorin) seeking the reversal of the Resolution of the Integrated Bar of the Philippines (IBP) Board of Governors dated February 6, 2008, suspending him from the practice of law for one year.

Wilhelmina Virgo (complainant) filed with the IBP a Complaint for disbarment against Atty. Amorin dated September 11, 2006 before the IBP Committee on Bar Discipline (CBD), alleging, as follows: She and her husband (collectively referred to as "Virgos") owned a house in Loyola Grand Villas (the Virgo Mansion) situated on two lots[1] which Atty. Amorin offered to buy in 1996. They agreed at the price of P45,000,000.00 (P45M) with the Virgos retaining the certificates of title so that Atty. Amorin could borrow from banks using the name of complainant who had a good credit standing. Atty. Amorin was kind and accommodating and offered to be complainant's legal consultant on several occasions free of charge. Complainant fully trusted Atty. Amorin, and the latter prepared Deeds of Sale bearing different amounts which the Virgos signed. Of the P45M price, however, Atty. Amorin only paid P20M, P10M of which came from loans made by complainant using the property as collateral. In April 1998, Atty. Amorin issued three checks[2] to cover the balance of P25M, which checks, however, were dishonored because the payments were stopped or had insufficient funds. Atty. Amorin also intentionally altered his signature on the checks. Complainant made several demands on Atty. Amorin to no avail; thus, she filed estafa and Batas Pambansa (B.P.) Blg. 22 cases against him on February 1, 2002.[3] Atty. Amorin in turn filed one civil[4] and nine criminal cases[5] against complainant which damaged her good business reputation and credit standing.[6]

Atty. Amorin filed an Answer[7] denying the charges against him and claiming that complainant only filed the complaint against him because of the reversals in complainant's court cases against him. He also asserts that assuming that the accusations of complainant are true, such are not grounds for disbarment, not being related to his professional conduct but at most are merely bases for civil action, in this case Civil Case No. Q-01-45798 pending before Branch 221, Regional Trial Court, Quezon City (RTC-QC).[8]

Atty. Amorin avers: The property was not sold to him personally but to Loveland Estate Developers, Inc. (LEDI) of which he is the President. Complainant did not mention in her complaint that the property is involved in three other cases: (1) Civil Case No. Q-01-45798[9] pending before RTC-QC Branch 221, (2) LRC Case No. Q-15382 (02)[10] before RTC-QC Branch 216, and (3) CA-GR SP No. 77986[11] before the Court of Appeals (CA). In CA-GR SP No. 77986, the CA found that the Virgos, in bad faith, received P12M from the Bank of the Philippine Islands (BPI) after having been already paid by him. The Virgos no longer own the property, as they have already sold the same to LEDI through the Deed of Absolute Sale with Assumption of Mortgage for the lot covered by Transfer Certificate of Title (TCT) No. 25894, the Deed of Absolute Sale for the lot covered by TCT No. 26376

and the Deed of Absolute Sale with Assumption of Mortgage which consolidates the two previous deeds of sale. It is not true that they agreed on the price of P45M, as shown by a copy of the affidavit of Antonio Virgo, complainant's husband, and the receipts for the commissions of complainant's real estate broker. The truth is that as early as 1994, the property was being sold for P20M, but there were no buyers so complainant lowered the price to P15M, of which P10M was paid by him with a Far East Bank and Trust Co. (FEBTC) Check[12] dated May 28, 1996; the amount of P2M with FEBTC Check[13] dated June 3, 1996; and for the balance, by assuming complainant's loan from FEBTC for P3million.[14]

Atty. Amorin further alleges: He and complainant used to have cordial relations, but he never offered her legal services. He gave complainant the deeds of sale so she could have them notarized and have the assumption of loan approved by FEBTC. Said loan, which complainant obtained without his knowledge and consent and using the house and lots as collateral, was for her own benefit and this was the transaction which the CA condemned. It is also not true that he paid complainant P25million in April 1998 with three checks. Complainant stole 3 blank checks from him and forged the same which was his basis for filing falsification and perjury cases against complainant. He did not file said cases in order to threaten her, as he filed them earlier than IS No. 02-1551 -- the estafa and B.P. Blg. 22 case which complainant filed against him.[15]

A Mandatory Conference was held before the IBP Investigating Commissioner on March 16, 2007, and both parties and their respective counsels appeared.[16] Thereafter, the parties submitted their position papers reiterating their arguments. In her Position Paper, complainant asserts that the attorney-client relationship that existed between her and Atty. Amorin are shown by the letters of Atty. Amorin to her, one of which clearly states that Atty. Amorin has given her and her husband legal services and consultations for free.[17] Atty. Amorin in his Memorandum meanwhile insists that there is no lawyer-client relationship between them, since there was no specific case or transaction in which represented her or gave her professional advice.[18] Complainant filed a Reply arguing that the fact that the legal advice given by Atty. Amorin was for free is immaterial, since lawyering does not confine itself to actually handling a case, but includes giving legal advice through consultations.[19] Complainant also filed a Supplement to Reply to Respondent's Memorandum pointing out that CA-GR SP No. 77986 repeatedly referred to by Atty. Amorin does not include her as a party; thus, she was not given any opportunity to explain her side.[20]

Atty. Salvador B. Hababag, Commissioner of the IBP-CBD, submitted his Report dated January 7, 2008 finding Atty. Amorin guilty of misconduct and recommending his suspension from the practice of law for six months.

Commissioner Hababag found that: Atty. Amorin used his legal knowledge and training to induce complainant to part with her property; Atty. Amorin admitted preparing three deeds of sale, but denies the existence of a fourth one which complainant claims to embody their real intent as to the purchase price; this was Atty. Amorin's scheme to defraud not only complainant but also the government of its taxes from the sale; Atty. Amorin failed to fulfill his promise to pay the purchase price in cash and to pay the P25million balance, issuing three postdated checks which were dishonored, however, due to insufficient funds; Atty. Amorin also intentionally altered his signature on the checks and when complainant tried to collect the balance, Atty. Amorin filed several cases to harass her; Atty. Amorin violated Rule 1.02 of the Code of Professional Responsibility, which provides that "A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system" and Rule 1.01 of the CPR, which states "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct"; finally, complainant was not a party to CA-GR SP No. 77986; thus, she was not able to defend herself and introduce evidence on her behalf.[21]

On February 6, 2008, the IBP Board of Governors passed RESOLUTION NO. XVIII-2008-77, CBD Case No. 06-1829, to wit:

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RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigation Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, considering Respondent's violation of Canon 1, Rule 1.01 and Rule 1.02 of the Canons of Responsibility when he used his legal knowledge and training to induce complainant to part with her property and eventually defraud her in the process, Atty. Oliver V. Amorin is hereby SUSPENDED from the practice of law for one (1) year.[22]

Atty. Amorin is now before the Court assailing the IBP Resolution, raising the main issue:

whether or not there is sufficient evidence to support the finding of [Complainant] that [Atty. Amorin] violated Canon 1, Rule 1.01 and Rule 1.02 of the Canons of Professional Responsibility when he used his legal knowledge and training to induce [complainant] to part with her property and eventually, defraud her in the process

and two sub-issues:

whether or not the Decision dated September 7, 2004 of the Court of Appeals in CA-GR SP No. 77986 Loveland Estate Developers, Inc. etc. vs. Hon. Ofelia Arelano Marquez, et al. can serve as evidence against [complainant]; and

whether or not public respondent (Board of Governors, IBP Commission on Bar Discipline) can legally decide the complaint of (Virgo) based on alleged facts which are the subject of Civil Case No. Q-01-45798, Loveland Estate Developers, Inc. vs. BPI Leasing and Finance Corporation, Ricky Sunio, Fred Galang, Danilo T. Reyes, Antonio L. Virgo, Wilhelmina Virgo and the Registry of Deeds of Quezon City, still pending before Branch 221 of the Regional Trial Court in Quezon City.

Atty. Amorin argues that: the IBP Commissioner's Report which the IBP Board of Governors adopted is based solely on the pleadings and documents of complainant which are self-serving and unsupported by official documents; the findings of fact of the IBP crumble when arrayed against the CA Decision dated September 7, 2004 in CA-GR SP No. 77986 which found complainant to have acted in bad faith; his evidence, consisting primarily of the CA Decision in CA-GR SP No. 77986 and the sworn statement of complainant's own husband show the opposite of the IBP's findings of facts, i.e., it was complainant who committed fraud and deceit against him; both documents show that complainant used the property which she already sold to him, as collateral for a new loan of P12M from the BPI; the Counter-Affidavit of Antonio Virgo, as one of the respondents in IS No. 17683, an Estafa and B.P. Blg. 22 case, stated that he and his wife sold the Virgo Mansion to Atty. Amorin for P15M to be paid with FEBTC checks and the assumption of the balance of the complainant's loan with FEBTC; although complainant is not a respondent in CA-GR SP No. 77986, said case is admissible as evidence against her, since the CA case was derived from two other cases in the RTC; Civil Case No. Q-01-45798 and LRC Case No. Q-1538 (02); complainant is a private respondent in Civil Case No. Q-01-45798 pending before Branch 221 of RTC-QC. Atty. Amorin also argues that the facts which are used by the IBP as the basis for placing Atty. Amorin under suspension from the practice of law for one year are the facts in litis in said case; thus, it is premature and improper for the IBP to render the herein assailed Resolution, as it will preempt the findings and decision that the RTC will render in the civil case.

Complainant filed her Comment reiterating her arguments before the IBP and adding that her husband's affidavit, which is being invoked by Atty. Amorin in his Petition, cannot be considered as impartial since she and her husband have not been in good terms after she filed a criminal case for concubinage against him, for which he

was found guilty by the trial court.

The Court finds the petition to be with merit.

First, the existence of an attorney-client relationship between Atty. Amorin and complainant was not established.

An attorney-client relationship is said to exist when a lawyer acquiesces or voluntarily permits the consultation of a person, who in respect to a business or trouble of any kind, consults a lawyer with a view of obtaining professional advice or assistance. It is not essential that the client should have employed the lawyer on any previous occasion or that any retainer should have been paid, promised or charged for; neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had, for as long as the advice and assistance of the attorney is sought and received in matters pertinent to his profession.[23]

There are instances, however, when the Court finds that no attorney-client relationship exists between the parties, such as when the relationship stemmed from a personal transaction between them rather than the practice of law of respondent or when the legal acts done were only incidental to their personal transaction.[24]

In trying to prove that there exists an attorney-client relationship between them, complainant attached to her Position Paper four letters and a Memorandum of Agreement drafted by and sent to them by Atty. Amorin. As to the first letter dated October 14, 1998, complainant argues that the part in the letter which states:

As to why you did this to us (Amorins), inspite of all the favors my wife and I have given you, the free legal services and consultations granted you without any consideration or expectation of any remuneration.[25]

should be considered as proof that there exists an attorney-client relationship between them.

Reading the letter in its entirety, especially the preceding paragraph, to wit:

Incidentally, we have been informed by our bank, United Coconut Planter's Bank, Diliman Branch, to the effect that you attempted to encash three (3) checks allegedly issued to me. They did not honor the three checks in the total amount of TWENTY FIVE MILLION PESOS (P25,000,000.00) as the signature appearing therein was not my own signature. As to why this happened is beyond my comprehension, knowing as you do that we do not have any obligation with you. On the contrary, you are the one who owe us TWO MILLION TWO HUNDRED FORTY THOUSAND PESOS, which we previously encash but the two checks bounced.

would show however that Atty. Amorin was confronting complainant about her act of using the subject property as a collateral for a P12M loan from the FEBTC when she and her husband had already sold the property to LEDI. Rather than confirming any attorney-client relationship between them, the said paragraph, if read in its full context, actually conveys Atty. Amorin's frustration over what he felt was an act of betrayal on complainant's part despite the free legal services and consultations he had extended to complainant without any consideration or expectation of any remuneration. Read in this light, the Court cannot appreciate such statement as proof that an attorney-client relationship existed between them.

Complainant also attached other letters sent by respondent, dated July 6, 1999,[26] December 17, 1999[27] and an undated one,[28] plus a draft Memorandum of Agreement,[29] which talk about the complainant's property in Tanay, its excavation for possible hidden treasure, their supposed sharing in the expenses and Atty. Amorin's interest in buying the said property. Rather than bolstering complainant's claim that there exists an attorney-client relationship between them, such letters actually strengthen the idea that the relationship of complainant and Atty. Amorin is mainly personal or business in nature, and that whatever legal services may have been rendered or given to them by Atty. Amorin for free were only incidental to said relationship. Noteworthy also is the fact that complainant was not able to specify any act or transaction in which Atty. Amorin acted as her or her husband's counsel.

Second, Atty. Amorin has pointed out and complainant does not deny, the existence of other cases related to the present disbarment case. Civil Case No. 01-45798, pending before RTC-QC Branch 221, a case for Annulment of Real Estate Mortgage and Foreclosure Proceedings with Damages, Temporary Restraining Order and/or Preliminary Injunction and Preliminary Attachment, filed by LEDI against BPI Leasing and Finance Corp., its officers, the Registrar of Quezon City and the Virgos, assail the foreclosure by BPI of the Virgo Mansion which LEDI claims to have already been sold by the Virgos to them. In claiming ownership of the property, LEDI necessarily has to raise factual matters pertaining to the sale by the Virgos of the property to them, such as the actual selling price, the validity of the deeds of sale, and the terms of payment, which are inextricably intertwined with the present disbarment case.[30]

LRC Case No. Q-15382 (02), a petition for the issuance of writ of possession filed by the BPI before RTC QC Br. 216 seeks to foreclose the Virgo Mansion, which complainant and her husband mortgaged to BPI in 1998,[31] while CA-GR SP. No. 77986 is a petition for certiorari and prohibition asking the CA to stop the judge therein from enforcing the writ of possession issued pursuant to LRC Case No. Q-15382.[32]

While it is true that disbarment proceedings look into the worthiness of a respondent to remain as a member of the bar, and need not delve into the merits of a related case, the Court, in this instance, however, cannot ascertain whether Atty. Amorin indeed committed acts in violation of his oath as a lawyer concerning the sale and conveyance of the Virgo Mansion without going through the factual matters that are subject of the aforementioned civil cases, particularly Civil Case No. 01-45798. As a matter of prudence and so as not to preempt the conclusions that will be drawn by the court where the case is pending, the Court deems it wise to dismiss the present case without prejudice to the filing of another one, depending on the final outcome of the civil case.

WHEREFORE, Resolution No. XVIII-2008-77 dated February 6, 2008 of the Integrated Bar of the Philippines is REVERSED and SET ASIDE, and the administrative case filed against Atty. Oliver V. Amorin docketed as A.C. No. 7861 is DISMISSED without prejudice.

SO ORDERED.

Tinga[*], Chico-Nazario, Nachura, and Peralta, JJ., concur.

[*] In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 556 dated January 15, 2009.

[1] Covered by TCT Nos. 25894 and 26376.

[2] UCPB, dated April 30, 1998, May 15, 1998 and May 30, 1998 in the amounts of P10,000,000, P7,500,000.00 and P7,500,000.

[3] IS No. 02-1551.

[4] Civil Case No. 01-45798 "Loveland Estate Developers Inc., v. Wilhelmina Virgo et al.," for TRO/Injunction."

[5] I.S. Nos. 01-17683, 01-16300 and 01-16301 for Violation of Batas Pambansa Blg. 22 and Estafa; IS Nos. 02-2171, 02-2172, 02-3011 and 02-3012 for Perjury/Intriguing Against Honor; IS No. 02-33325 for Perjury and IS No. 02-3704 for Perjury and Falsification of Commercial Document.

[6] Rollo, pp. 2-7.

[7] Dated February 8, 2007.

[8] Rollo, pp. 72.

[9] Entitled "Loveland Estate Developers Inc. v. BPI Leasing & Finance Corp., Ricky Sunio, Fred Galang, Danilo T. Reyes, Antonio L. Virgo, Wilhelmina C. Virgo, and the Registrar of Deeds of Quezon City" for Annulment of Real Estate Mortgage and Foreclosure Proceedings, with Damages, Temporary Restraining Order and/or Preliminary Injunction, and Preliminary Attachment. See rollo, p. 164.

[10] Entitled "In the Matter of Petition for Issuance of Writ of Possession" filed by BPI Leasing Corp. See rollo, p. 176.

[11] Entitled "Loveland Estate Developers Inc. v. Hon. Ofelia Arellano-Marquez, in her capacity as Presiding Judge of Branch 216, Regional Trial Court, Quezon City, Joseph S. Bisnar, in his capacity as Sheriff of Quezon City, and BPI Leasing Corp." See rollo, p. 183.

[12] No. DIL091066.

[13] No. DIL091067.

[14] Rollo, pp. 68-74, 80.

[15] Rollo, pp. 75-84.

[16] Id. at 119-120.

[17] Id. at 123-138.

[18] Id. at 140-159.

[19] Id. at 201-202.

[20] Id. at 211-213.

[21] Rollo, pp. 257-263.

[22] Rollo, p. 256.

[23] Uy v. Gonzales, A.C. No. 5280, March 30, 2004, 426 SCRA 422, 431.

[24] Id. at 431.

[25] Rollo, p. 134.

[26] Rollo, p. 134b.

[27] Id. at 135.

[28] Id. at 136.

[29] Id. at 137-138.

[30] Rollo, pp. 164-174.

[31] Id. at 176-182.

[32] Id. at 184-185.

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