

**WEN MING W CHEN, A.K.A. DOMINGO TAN, COMPLAINANT, VS.  
ATTY. F.D. NICOLAS B. PICHAY, RESPONDENT.***A.C. No. 7910. September 18, 2009*

Ponente: YNARES-SANTIAGO, J.

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On March 1, 2006, a complaint was filed by Wen Ming W Chen, also known as Domingo Tan, before the Integrated Bar of the Philippines (IBP) against Atty. F.D. Nicolas B. Pichay for (1) violation of Rule 1.01 of the Code of Professional Responsibility when he allegedly extorted money from the complainant; (2) gross misconduct amounting to gross inexcusable ignorance of the law when he filed complaints for damages before the Department of Justice (DOJ); and (3) violation of Rule 10.3 of the Code of Professional Responsibility when he filed a motion before the Regional Trial Court seeking the inclusion of complainant's name in the hold departure list of the Bureau of Immigration and Deportation (BID).

Atty. Pichay is the legal counsel of American Security Systems International (ASSI), an intellectual property consultancy firm incorporated under Philippine laws. ASSI is engaged in investigating and prosecuting violations of the intellectual property rights of its clients which include Guccio Gucci S.P.A. (Gucci) and Louis Vuitton (LV).

In February 2006, Branch 24 of the Manila Regional Trial Court issued six warrants upon the application of the National Bureau of Investigation (NBI), which included the search of the residence of Caili Zhen, a.k.a. Susan Chua, and herein complainant, located at Unit 15, Juan Luna Garden, 988 Juan Luna Street, Tondo, Manila. The application was based on the investigation previously conducted by the NBI on alleged rampant selling of counterfeit Gucci and LV items. On February 6, 2006, said search warrants were implemented and thousands of counterfeit Gucci and LV items were seized from complainant's residence.

At this point, the parties' respective versions of the events diverge materially.

Complainant alleged that on February 14, 2006, respondent requested a meeting during which he demanded P500,000 from complainant in return for not filing criminal charges against the latter. When complainant rejected respondent's proposal, the latter filed two complaints for damages before the DOJ. According to complainant, respondent ought to know that the DOJ has no jurisdiction over civil actions for damages.

Finally, complainant alleged that respondent applied for the issuance of a hold departure order against complainant despite the absence of a criminal case filed with the Regional Trial Court.

On the other hand, respondent alleged that after the implementation on February 6, 2006 of the search warrant and the seizure of the counterfeit Gucci and LV items, he received a call from Atty. Jose Justo Yap, Chief of the NBI Intellectual Property Rights Division, informing him that David Uy who is allegedly a friend of herein complainant is requesting a meeting. As relayed by Uy, complainant wanted to propose a settlement regarding the seized items. After conferring with representatives of Gucci and LV, respondent agreed to meet complainant and

Uy, provided Atty. Yap would sit in as observer.

On February 14, 2006, at around 2:00 p.m., respondent arrived at the coffee shop of the Diamond Hotel and was introduced by Atty. Yap to his companion, Atty. Saldana, and David Uy. Another man was also seated in their table but he could no longer recall his name.

During the meeting, Uy informed respondent that he was attending the meeting on behalf of complainant as the latter could not communicate well in English or Filipino. When asked if Tan was present, Uy informed respondent that the former was not around.

Uy then proceeded to ask respondent about Gucci and LV's proposals but respondent replied that since the meeting was initiated by Uy, then it would be more appropriate if he would be the one to submit proposals. Uy inquired if Gucci and LV would require payment of damages, to which respondent answered that based on previous experience, the two entities would require payment of damages. Uy then asked how much damages would Gucci and LV demand, but respondent replied that he was only authorized to receive proposals but not to suggest provisions for settlement. He informed Uy though that based on previous settlements, the damages would range from P500,000 to P1Million, depending on the quantity of the counterfeits seized. Uy also inquired whether the confiscated items would be returned to complainant but respondent informed him that the return of the seized items was non-negotiable.

There being no settlement reached, respondent filed two complaints before the DOJ upon instructions of Gucci and LV. Also, in good faith and in order to protect the interests of his clients, respondent filed a motion before the Regional Trial Court of Manila for the inclusion of complainant's name in the hold departure order list.

Respondent vehemently denied extorting money from complainant in exchange for Gucci's and LV's desistance. He emphasized that the meeting was not of his own initiative but upon the request of complainant and David Uy. He also insisted that until now, he never met complainant personally. As regards the cases filed before the DOJ, respondent explained that Gucci and LV intended to have the civil aspect of the case instituted along with the criminal aspect. In fact, the DOJ complaints both pray that damages be awarded "after trial on the merits" and "for such other equitable reliefs and remedies which the Honorable Court may deem just and equitable." According to respondent, these are indications of his awareness of the limited jurisdiction of the DOJ. Even conceding that he erred in this regard, respondent maintained that such does not warrant his disbarment.

As regards the filing of the motion for inclusion of complainant's name in the hold departure list, respondent argued that the filing was done to protect the interests of his client moreso because complainant had been previously blacklisted and ordered for deportation by the BID. Besides, it was up to the trial court whether to grant the same or not. Respondent asserted that it would be absurd and highly oppressive if a lawyer would be subjected to administrative sanctions every time he commits mistakes albeit unintentional and in good faith.

Complainant thereafter filed his Reply reiterating his earlier arguments, but did not rebut respondent's allegations that David Uy, Atty. Saldana and Atty. Yap were likewise present during the meeting. As regards the allegation that he was not even present during the meeting, complainant claimed that "whether respondent has or has no knowledge of the presence of complainant in the said meeting does not change the circumstances of the case."

Thereafter, the parties submitted their respective position papers. For the first time, complainant admitted that he met respondent on February 14, 2006 accompanied by David Uy; however, he did not make any comment on Atty. Yap's presence thereat; he insisted that respondent extorted money from him; that respondent abused the rules of procedure when he filed actions for damages before the DOJ and erroneously applied for the issuance of a hold departure order before the Regional Trial Court.

In his Position Paper, respondent attached the affidavit of Atty. Yap, Chief of the Intellectual Property Rights Division of the NBI, who admitted that he was present during the February 14, 2006 meeting. At the same time, he corroborated in all material respects respondent's narration of what actually transpired during the said meeting.

On January 29, 2008, Investigating Commissioner Rebecca Maala of the IBP submitted her Report with recommendation that respondent be suspended for a period of four months "from the practice of law and as a member of the Bar." According to Maala, respondent's filing of two cases before the DOJ seeking for an award of damages demonstrates ignorance of the law and illustrates his intention to harass complainant; that the erroneous application for the hold departure order likewise exemplifies his ignorance of the law considering that no Information has been filed in Court. As regards the alleged extortion, Maala found that "no sufficient evidence was presented by both parties as to which of them is telling the truth."

By Resolution No. XVIII-2008-122, the IBP Board of Governors adopted Maala's findings with modification that respondent's period of suspension be increased to one year.

Hence this petition.[1] Respondent submits that at the heart of this case is the rancor of a disgruntled opponent who has been investigated for and charged with unfair competition or selling counterfeit items bearing the trademarks of Gucci and LV; a resident alien who has been blacklisted and previously ordered for deportation by the BID.

We find merit in the petition.

We cannot agree with Maala's findings that there is no evidence on record to disprove complainant's allegation of extortion. Interestingly, Maala never mentioned in her Report the Affidavit of Atty. Justo Yap, Chief of the Intellectual Property Rights Division of the NBI which substantially corroborated respondent's narration of what actually transpired during the February 14, 2006 meeting. At any rate, even without Atty. Yap's affidavit, we find it hard to believe complainant's well-crafted tale of extortion.

First, we cannot lend credence to complainant's allegation that it was respondent who requested a meeting. The facts show that it was complainant who was in quandary after the implementation of the search warrants in his residence, where thousands of counterfeit items were seized. Complainant never denied ownership of the seized items or that he wanted them back. Clearly, he has more reason to seek the help of respondent and thus initiate the meeting.

Second, complainant failed to mention in his complaint and in his Reply to respondent's Answer the presence of David Uy during the meeting. He only admitted for the first time in his Position Paper the presence of Uy during the February 14, 2006 meeting. We find this odd considering that it was Uy who acted as his representative. Also, he could have submitted Uy's affidavit to substantiate his claim but did not.

Third, notwithstanding the several opportunities given him, complainant did not rebut or categorically deny the presence of Atty. Yap during the meeting. He also failed to deny the allegations of Atty. Yap in his affidavit. Complainant's silence means admission that indeed Atty. Yap was present during said meeting.

Fourth, there was no allegation that respondent was acquainted to complainant or David Uy prior to the meeting. Thus, we find it highly inconceivable for respondent who allegedly met complainant for the first time, to immediately demand money from him, moreso in the presence of the NBI Chief of the Intellectual Property Rights Division.

Fifth, complainant did not bother to present Uy to corroborate his version of the event.

Finally, we find it hard to believe that respondent, as counsel for ASSI, could unilaterally decide to desist from

filing criminal charges against herein complainant without consultation or prior approval of his clients, Gucci and LV.

Viewed against complainant's bare and self-serving allegation that respondent extorted money from him, the foregoing clearly prove that no such extortion took place.

Next, we cannot subscribe to Maala's findings that the DOJ complaints were intentionally filed to harass herein complainant. As previously stated, there was no reason for respondent to harass herein complainant, considering that the search warrants were successfully implemented and the counterfeit items were seized from complainant's residence. By filing the DOJ complaints, respondent was only taking the next step which in his opinion was the most logical remedy in protecting the interests of Gucci and LV.

Even assuming that the cases filed were civil actions for damages, the same does not merit respondent's disbarment or suspension. There is nothing on record to show that the filing of the cases was done for the purpose of harassment. The conclusion that the filing of the DOJ complaints was to harass complainant has no basis. If at all, it was an error of judgment sans bad faith. It has been held that not all mistakes of members of the Bar justify the imposition of disciplinary actions. An attorney-at-law is not expected to know all the law. For an honest mistake or error, an attorney is not liable.[2] The alleged errors are not of such nature which would warrant the imposition of the penalty of suspension for one year.

Records show that on April 14, 2008, the DOJ resolved in I.S. No. 2006-192 to charge respondents therein, including herein complainant with Unfair Competition under Section 168.3(a) in relation to Section 170 of R.A. 8293. The corresponding Information has been filed in the Regional Trial Court of Manila docketed as Criminal Case No. 08264729.

WHEREFORE, the instant complaint filed against Atty. F.D. Nicolas B. Pichay is DISMISSED for lack of merit.

**SO ORDERED.**

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

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[1] Pursuant to Section 12 (b) &(c) of Rule 139-B of the Rules of Court, as well as Section 1, as amended & Section 2(e), Rule III of the Rules of Procedure of the Commission on Bar Discipline, Integrated Bar of the Philippines.

Sec. 12 (b) & (c) of the Rules of Court provide:

Sec. 12. - View and decision by the Board of Governors.

x x x x

(b) If the Board, by the vote of majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall be forthwith transmitted to the Supreme Court for final action.

(c) If the respondent is exonerated by the Board or the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand, or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

Section 1, as amended by Bar Matter No. 1755 - Re: Rules of Procedure of the Commission on Bar Discipline, and Section 2(e), Rule III of the Rules of Procedure of the Commission on Bar Discipline, Integrated Bar of the Philippines, provide:

Section 1. Pleadings. The only pleadings allowed are verified complaint, verified answer and verified position papers.

Sec. 2. Prohibited Pleadings. - The following pleadings shall not be allowed, to wit:

x x x x

e. Motion for Reconsideration.

[2] *Mendoza v. Mercado*, A.C. No. 1484, June 19, 1980, 98 SCRA 45, 47.

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