ATTY. MINIANO B. DELA CRUZ, COMPLAINANT, VS. ATTY. TEODORICO N. DIESMOS, RESPONDENT.

Adm. Case No. 6850 (Formerly CBD-03-1155). July 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

A lawyer enjoys the presumption that he is innocent of the charges filed against him and unless the complainant proves his allegations by clear, convincing and satisfactory evidence, the complaint against the lawyer must be dismissed.

At bar is another illustration of this basic precept.

On October 23, 2003, Atty. Miniano B. Dela Cruz (complainant) filed an Affidavit-Complaint with the Integrated Bar of the Philippines (IBP) alleging that: Atty. Teodorico N. Diesmos (respondent) violated his oath as a lawyer, as follows: (1) respondent filed, in behalf of his clients, Sps. Nathaniel and Felicidad Bunyi (Bunyis), an original application for registration of title before the Metropolitan Trial Court (MTC) of Taytay,[1] the verification portion of which is false as the community tax certificates used by the spouses are fake; (2) respondent presented Felicidad Bunyi (Felicidad) on July 2, 1999 before the MTC who testified that Lot No. 3064, subject matter of the application, was public land when respondent knew that as early as June 17, 1999, Felicidad already officially received a copy of the certification from the CENRO[2] of Antipolo stating that Lot No. 3064 was subject of a free patent application filed by complainant; (3) he misled the MTC into thinking that the subject lot was still public land when respondent knew that it no longer was, which knowledge is shown by the Notice of Lis Pendens filed by him against the titled property (Lot No. 3064) of complainant and his wife; (4) respondent filed, for the Bunyis, a complaint for reconveyance with cancellation of title before the Regional Trial Court (RTC) of Antipolo City against complainant,[3] fully aware that the claim of ownership by the Bunyis was untrue and without factual or legal basis; and that Lot No. 3064 was already covered by an approved Free Patent in favor of complainant and his wife; (5) he knowingly used as evidence in the complaint for reconveyance, the Decision of the MTC in the application for registration when he knew that said decision was secured through misrepresentation; the decision is still subject of an appeal by the Solicitor General; and that the decision is void because respondent failed to submit the tracing cloth plan of the approved survey of Lot No. 3064 as well as a formal offer of evidence after the testimony of Felicidad on July 2, 1999.[4]

On October 24, 2003, pursuant to Rule 139-B, Sec. 6 of the Rules of Court, the IBP Director for Bar Discipline, Rogelio A. Vinluan issued an Order directing respondent to submit his answer to the Complaint.[5]

In his Answer, respondent explained that: the Bunyis are his clients in two cases, LRC No. 98-3329, an application for original registration and confirmation of title filed before the MTC of Taytay on November 27, 1998 and Civil Case No. 99-5354 entitled "Sps. Nathaniel and Felicidad Bunyi v. Sps. Miniano B. Dela Cruz and Leta Dela Cruz et al" filed before the RTC of Antipolo City on July 1, 1999; respondent was not present when the Bunyis signed the original application for registration of title as the application was subscribed before Notary

Public Atty. Antonio Villanueva on November 25, 1998 and it was only on November 26, 1998 that the duly executed and notarized application was returned to him (respondent); even if it were true that the Bunyis used falsified community tax certificates in their application, he was not aware of it and he filed said application in good faith and with the best of intentions; it was not on July 2, 1999 that Felicidad testified before the MTC, but on June 25, 1999, at which time she had not yet received the June 17, 1999 certification referred to by complainant, thus, Felicidad could not have been aware of complainant's patent application over Lot No. 3064; it is not for complainant to say that the basis of the claim of ownership by the Bunyis are "untrue", "void" or "without legal basis" for it is for the court to decide if the claim has merit; contrary to the allegation of complainant, respondent filed a formal offer of evidence in the application for registration of title of the Bunyis before the MTC; the present complaint was only filed to gain leverage against the Bunyis who oppose complainant's attempt to deprive them of their property; the Bunyis are also like other litigants in different courts in Rizal who are one in claiming that herein complainant had unlawfully taken away their lands.[6]

On January 20, 2004, both parties appeared before the IBP and submitted documents for marking.[7]

Complainant thereafter submitted a position paper[8] as well as a supplement[9] reiterating his claims.

On May 17, 2005, IBP Commissioner Leland R. Villadolid, Jr. submitted his report with the recommendation that the complaint against respondent be dismissed for lack of merit.[10]

Commissioner Villadolid found that: complainant failed to establish by convincing proof the commission of the violations imputed against respondent; except for the bare allegations of complainant, there is no evidence to indicate that respondent knew that his clients utilized falsified community tax certificates; neither is there evidence to show that the Bunyis knowingly and intentionally utilized false community tax certificates; the said application for registration shows that the verification portion was not notarized by respondent herein; the records of the proceedings before the MTC also show that Felicidad testified on June 25, 1999 and not July 2, 1999 thus it is credible that when Felicidad testified before the MTC, she and respondent were not yet aware of the certification issued by the CENRO of Antipolo stating that Lot No. 3064 was subject of a free patent application by complainant; upon being informed of the certification, respondent, in behalf of the Bunyis filed a complaint before the RTC to recover Lot No. 3064 and to protect the interests of his clients over the property; the filing of the Notice of Lis Pendens was also aimed at preserving the rights of the Bunyis and to prevent the lot from being transferred to another party without the latter being made aware that the subject property was under litigation; complainant's allegation that the MTC decision is void is likewise without legal basis as there is a legal presumption of regularity in the issuance of and validity of the said decision and until it is reversed, annulled or set aside, it remains valid and should be accorded evidentiary weight.[11]

On June 25, 2005, the IBP Board of Governors passed a Resolution adopting and approving the recommendation of Commissioner Villadolid as follows:

> RESOLUTION NO. XVI-2005-253
> CBD Case No. 03-1155
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> Atty. Teodorico N. Diesmos
>
> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating 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, and considering that the complaint lacks merit, the same is hereby DISMISSED.[12]

On August 30, 2005, complainant filed with the Court a Motion for Reconsideration, herein treated as a petition

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under Rule 139-B, Section 12 (c) of the Rules of Court, contending that: the IBP Board of Governors acted with grave abuse of discretion amounting to lack of jurisdiction in adopting the baseless report and recommendation of the investigating commissioner, thus, its resolution was void ab initio; the IBP Board of Governors approved and tolerated the gross incompetence or acts of disloyalty of respondent to his clients in violation of the Code of Professional Responsibility; the IBP Board of Governors failed to notice that the report of the investigating commissioner was so poorly done because of ignorance of the law and gross incompetence in the performance of his duties as he failed to notice the evidence that show that respondent is guilty as charged in the complaint; respondent has the habit of not doing his duty under the law as shown by his failure to submit the original tracing cloth plan, a formal offer of evidence, appellee's brief to the Court of Appeals and his own position paper in this case; the allegation of the Solicitor General and the statement of Felicidad in her Answer to Request for Admission also proves that she testified on July 2, 1999 and not on June 25, 1999.[13]

Respondent filed his Comment stating that the IBP was correct in adopting the recommendation of the investigating commissioner. He reiterated his defense and added that even if Felicidad answered on May 16, 2005 to the Request for Admission that she testified on July 2, 1999 and not June 25, 1999, the court records will show that she indeed testified on June 25, 1999. Respondent also pointed out that the Answer to the Request for Admission was prepared by the Bunyis' new counsel who might have overlooked the date of the stenographic notes.[14]

We resolve to deny complainant's motion.

Disbarment, which complainant wants to be meted upon respondent, is the most severe form of disciplinary action.[15] It should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards.[16]

Consequently, the burden of proof rests on the complainant to establish his charges by clear preponderance of evidence.[17] Basic is the rule that the burden of proof lies on the party who makes the allegations.[18] Thus, the adage that "he who asserts not he who denies must prove."[19]

A lawyer enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved.[20] The case against respondent must therefore be established by clear, convincing and satisfactory proof considering the serious consequences of the disbarment or suspension of a member of the Bar.[21] While courts will not hold back in meting out the proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, they will also protect them from unjust accusations of dissatisfied litigants.[22] This Court will not hesitate to extend its protective arm to those the accusations against whom are not indubitably proven.[23] Indeed, the duty of the Court towards members of the bar is not only limited to the administration of discipline to those found culpable of misconduct but also to the protection of the reputation of those frivolously or maliciously charged.[24] In the absence of convincing or clearly preponderant evidence, the complaint for disbarment should be dismissed.[25]

Here, complainant asserts that respondent used and filed an application for registration of title before the MTC of Taytay knowing that the community tax certificates of the spouses Bunyi in the verification portion of the application are fake. As correctly observed by the investigating commissioner however, the verification portion of said application was notarized by another lawyer and not by respondent herein. All that complainant was able to prove was that the numbers appearing in the verification portion of the application were not among those issued by the Municipal Treasurer of Taytay for that year. The allegation that respondent knowingly filed an application with a defective verification portion due to falsified community tax certificates was not sufficiently proven and could not be a basis for disciplinary action against respondent.

Complainant also insists that Felicidad testified on July 2, 1999 at which time, she was already aware that Lot No. 3064 was already the subject of a free patent application by complainant. To support his claim, complainant cites the brief of the Solicitor General before the Court of Appeals where the Solicitor General made mention of July 2, 1999 and the "admission" of Felicidad in her answer to the Request for Admission given on May 16, 2005[26] where Felicidad did not correct the date "July 2, 1999" mentioned in the query. Respondent, on the other hand presented a copy of the calendar of cases of the MTC on June 25, 1999[27] and July 2, 1999[28] as well as a copy of the stenographic notes on June 25, 1999[29] to prove that Felicidad testified on June 25, 1999 and not on July 2, 1999. Between the allegation of the Solicitor General and the supposed "admission" of Felicidad on the one hand and the transcripts and court calendar of cases on the other, we find the latter to be of more weight and persuasion as these court records directly reflect as to what took place on the dates in question.

Also worth mentioning is the fact that even if June 25, 1999, the date Felicidad was recorded to have testified, is eight days after June 17, 1999, the date of the CENRO certification, complainant was not able to show when Felicidad actually received said certification or that she already received the subject certification when she testified in court. All that complainant was able to do was to attach to his Complaint a photocopy of the June 17, 1999 CENRO certification which did not have any marking however as to when it was actually sent to and received by Felicidad.[30] Complainant also tries to use the allegations in the Complaint filed by the Bunyis before the RTC to support his claim that Felicidad already knew about the patent application as of June 17, 1999.[31] A cursory reading of said portion of the complaint however shows otherwise. The quoted portion of the Bunyis' complaint reads:

> 2.9. During the hearings of LRC Case No. 98-0029, plaintiffs were required to secure from the Office of the CENRO, Antipolo, City a certification of their property (Lot 3064, Cad-688-D) that said parcel of land is not covered by any kind of public land application. Amazed and disappointed, plaintiffs discovered that said property is now covered by FPA No. 045813-154 in the name of defendant Miniano dela Cruz. Thus, on June 17, 1999 a certification was issued by Mr. Edmundo A. Dellova, Chief, Land Mgt. Services, CENRO-DENR, Region IV, Antipolo City x x x[32]

This portion of the Complaint only shows that a certification was issued by the CENRO on June 17, 1999. It does not follow however that the Bunyis received the said certification also on the same day.

Complainant in his Motion for Reconsideration also argues that based on the CENRO certification, which was dated June 17, 1999, both respondent and Mrs. Felicidad Bunyi already knew as of June 17, 1999 that Lot No. 3064 is already subject of Free Patent Application by Complainant and was ready for approval by the Provincial Environment and Natural Resources Office, Province of Rizal.[33] Again, such argument is non sequitur and the Court is not persuaded to uphold such reasoning.

Unless complainant can satisfactorily show that Felicidad actually knew that the subject property was no longer public land at the time of her testimony, it must be presumed that she testified with the honest belief that it was still public land and thus she should not be faulted or accused of having testified falsely.

Complainant also asserts that respondent should be disbarred for using the MTC decision to support the civil case respondent filed against complainant before the RTC, as the MTC decision is void for respondent's failure to submit a tracing cloth plan of the lot as well as a formal offer of evidence.

We find no merit in the contention of complainant that respondent should be disbarred for using the MTC decision to support its civil case before the RTC. By insisting that the MTC decision is void while it is still on appeal, complainant is preempting the evaluation of the higher courts on the validity of such decision. As correctly pointed out by the investigating commissioner, until such decision is reversed or annulled, respondent

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cannot be faulted for using it to support its case as such decision enjoys the presumption of validity.

As to respondent's alleged failure to file a formal offer of evidence, complainant himself, in his motion for reconsideration later changed his allegation and said that respondent did file a formal offer of evidence, although it was filed on July 1 or a day before the date which complainant insists is the date Felicidad testified. As records show that Felicidad took her testimony on June 25, 1999, this argument has no leg to stand on.

From the evidence presented, it is clear that complainant failed to present a clear case against respondent. Respondent meanwhile is under no obligation to present overwhelming evidence in his defense.

As the Court explained in Angeles v. Figueroa:[34]

> x x x a mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt. There must always be sufficient evidence to support the charge. This brings to the fore the application of the age-old but familiar rule that he who alleges must prove his allegations x x x [R]espondent x x x is not under obligation to prove his negative averment, much less to disprove what has not been proved by complainants. Thus, we have consistently held that if the complainant/ plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent/defendant is under no obligation to prove his exception or defense.
>
> The reason for this rule is that:
>
> The profession of an attorney is acquired after long and laborious study. It is a lifetime profession. By years of patience, zeal and ability, the attorney may be able to amass considerable means to support himself and his family, besides the honor and prestige that accompany his office and profession. To deprive him of such honored station in life which would result in irreparable injury must require proof of the highest degree x x x. While courts will not hesitate to mete out proper disciplinary punishment upon lawyers who fail to live up to their sworn duties they will, on the other hand, protect them from the unjust accusations of dissatisfied litigants. The success of a lawyer in his profession depends almost entirely on his reputation. Anything which will harm his good name is to be deplored. Private persons, and particularly disgruntled opponents, may not, therefore, be permitted to use the courts as vehicles through which to vent their rancor on members of the Bar.[35]

As a final word, the Court notes that after the IBP Board of Governors affirmed the report and recommendation of Commissioner Villadolid, complainant stated that the Board of Governors acted with grave abuse of discretion amounting to lack of jurisdiction as "they failed to notice that the report of the investigating commissioner was so poorly done because of ignorance of the law and gross incompetence in the performance of his duties as he failed to notice the evidence that show that Atty. Diesmos is guilty as charged in the complaint." The fact that the Investigating Commissioner found Atty. Dela Cruz's complaint to be wanting does not merit the derogatory accusation that Commissioner Villadolid was ignorant of the law and grossly incompetent in the performance of his duties. A thorough review of the records reveals that the report and recommendation of Commissioner Villadolid which was adopted by the IBP Board of Governors was well supported by the records and is consistent with prevailing jurisprudence. Complainant is therefore reminded that while a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. Using intemperate language and unkind ascriptions has no place in the dignity of the judicial forum.[36]

WHEREFORE, complainant's Motion for Reconsideration is DENIED for lack of merit and Resolution No. XVI-2005-253 of the Integrated Bar of the Philippines dismissing the complaint is AFFIRMED.

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SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Docketed as LRC Case No. 98-6028.

[2] Community Environment and Natural Resources Office.

[3] Docketed as Civil Case No. 99-5354.

[4] Rollo, pp. 1-2.

[5] Id. at 31.

[6] Id. at 36-41, 228-230.

[7] Id. at 139.

[8] Id. at 141-147.

[9] Id. at 152-159.

[10] Id. at 234.

[11] Id. at 231-233.

[12] Id. at 225.

[13] Id. at 235-247.

[14] Id. at 255-261.

[15]Uytengsu III v. Baduel, A.C. No. 5134, December 14, 2005, 477 SCRA 621, 630.

[16] Id.

[17]Id.; Gaviola v. Salcedo, A.C. No. 3037, May 20, 2004, 428 SCRA 563, 566; Berbano v. Barcelona, A.C. No. 6084, September 3, 2003, 410 SCRA 258, 264; Asturias v. Serrano, A.C. No. 6538, November 25, 2005, 476 SCRA 97, 105; Rudecon Management Corporation v. Camacho, A.C. No. 6403, August 31, 2004, 437 SCRA 202, 208.

[18] Uytengsu III v. Baduel, supra note 16.

[19] Berbano v. Barcelona, supra note 18.

[20] Uytengsu III v. Baduel, supra note 16.

[21] Gaviola v. Salcedo, supra note 18; Uytengsu III v. Baduel, supra note 16; Berbano v. Barcelona, supra note 18; Asturias v. Serrano, supra note 18.

[22]Gaviola v. Salcedo, supra note 18.

[23]Asturias v. Serrano, supra note 18.

[24] Aquino v. Villamar-Mangaoang, A.C. No. 4934, March 17, 2004, 425 SCRA 572, 575-576.

[25] Id. at 576.

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[26] Id. at 241-242, 244.

[27]Id. at 127-130, Annex "16."

[28]Id. at 131-132, Annex "17."

[29] Id. at 70-88, Annex "7."

[30]Id. at 5, Annex "B."

[31] Id. at 142-143.

[32]Id. at 142.

[33]Id. at 237.

[34]A.C. No. 5050, September 20, 2005, 470 SCRA 186.

[35] Id. at 195-196.

[36]Cruz v. Cabrera, A.C. No. 5737, October 25, 2004, 441 SCRA 211, 219.

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