

## THIRD DIVISION

[ A.C. No. 8777, October 09, 2019 ]

**ANA MARIE KARE, COMPLAINT, VS. ATTY. CATALINA L. TUMALIUAN, RESPONDENT.**

### DECISION

**PERALTA J.:\***

Before the Court is a Complaint-Affidavit<sup>[1]</sup> filed by complainant Ana Maria Kare on October 26, 2010 against respondent Atty. Catalina L. Tumaliuan for allegedly committing deceitful and fraudulent acts which are prejudicial to the legal profession and in serious violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility.

The antecedent facts are as follows:

Kare narrated that in a Contract to Sell<sup>[2]</sup> dated April 29, 2009, she sold to Tumaliuan her house and lot located at No. 8 Yakal Street, Vista Real Subdivision, Matandang Balara, Quezon City, for the total amount of P7,100,000.00. As part of the payment, Tumaliuan persuaded Kare to accept a Toyota Fortuner 2007 model. Reluctantly, Kare accepted the offer but with the agreement that the vehicle be covered by a document as proof of transfer to her. Thus, the parties executed a Sale of Motor Vehicle on September 22, 2009, which states that the vehicle's value was P1,000,000.00, but as a result of her bargaining, Kare was able to convince Tumaliuan to place the same at a lower value of P900,000.00. According to Kare, Tumaliuan merely gave her a photocopy of the Certificate of Registration (CR) No. 5000280-5<sup>[3]</sup> dated April 3, 2007 and consistently failed to give her the original CR despite repeated demands. Thus, she was forced to engage the services of a lawyer to formally demand Tumaliuan to deliver to her the said original, but to no avail. Suspicious by Tumaliuan's incessant refusal, Kare went to the Land Transportation Office (LTO) of Novaliches and to her surprise, she discovered that the subject vehicle was actually encumbered with a Chattel Mortgage<sup>[4]</sup> executed by Tumaliuan in favor of Banco De Oro Universal Bank (BDO) indicated on the CR No. 5739951-0 dated September 13, 2007. This was the reason why Tumaliuan could not produce the original CR.<sup>[5]</sup>

Kare, therefore, maintained that Tumaliuan acted with evident bad faith when she pretended to have the full title and ownership of the subject vehicle when in truth and in fact, the same was mortgaged with BDO. In the Sale of Motor Vehicle, Tumaliuan stipulated "that I hereby warrant unto the said ANA MARIE KARE full title and ownership over the vehicle above-described in favor of any person or entity." According to Kare, had she known of such encumbrance, she would not have accepted the vehicle as partial payment for her house and lot and would have demanded for cash payment instead. This deliberate and willful non-disclosure of the existence of the chattel mortgage was intended to defraud her of the value of

P900,000.00 which she applied as additional partial payment, and as a result, she is now greatly prejudiced because once BDO gains knowledge of the sale, the vehicle can instantly be taken from her.<sup>[6]</sup>

Tumaliuan, however, denied the charges against her. At the outset, she accused Kare of perjury for indicating in her complaint that she was residing at No. 8 Yakal Street, Vista Real Subdivision, or at the subject house she sold to the former when she already vacated said address on February 19, 2010. On the contrary, it was Tumaliuan who was already residing therein. Tumaliuan also faulted Kare when she said that the house and lot was still registered in her name when the same was already transferred in the name of the Government Service Insurance System (GSIS) as a result of the housing loan she obtained therefrom. Finally, Tumaliuan charged Kare of violating the rule against forum shopping when she intentionally failed to disclose the fact that she also filed a complaint before the Office of the City Prosecutor for estafa involving the same parties and the same issues.<sup>[7]</sup>

On Kare's claims, Tumaliuan consistently denied the allegations of fraud and bad faith. She insisted that she did not persuade Kare to accept the vehicle as part of her payment. In truth, it was Kare who dreamed of owning a Fortuner and requested that the same be given as part of the purchase price. Tumaliuan eventually acceded. Thus, she executed a Sale of Motor Vehicle and handed to Kare the photocopies of the CR and Official Receipt (OR) for the latter to verify the vehicle's status with the LTO as well as to check if it is included in the Highway Patrol Group's list of stolen vehicles.

According to Tumaliuan, on the same day of the execution of the Sale of Motor Vehicle on September 22, 2009, she simultaneously surrendered the vehicle itself together with the photocopies of the CR and OR. She further insisted that Kare was fully aware of the fact that the subject vehicle was mortgaged to BDO for a loan that expires in March 2011. It is highly unbelievable that Kare, a licensed physician, was unaware of said fact and remained so for an entire year and one month from the time that she received the vehicle on September 22, 2009 until the day she decided to file the instant complaint on October 26, 2010. In fact, it is common practice for buyers to verify the status of the property they are acquiring. Thus, the doctrine of "*caveat emptor*" should apply. Besides, she cannot be held guilty of fraud since she never made Kare believe that the vehicle was free from all liens and encumbrances. In the Sale of Motor Vehicle itself, she merely stated that she conveys "full title and ownership" over the said vehicle and not that it was "free from all liens and encumbrances." In the end, Tumaliuan pointed out that she has been a lawyer for almost fifteen years with good standing and an active officer of the Integrated Bar of the Philippines, Manila Chapter. As such, she could not have engaged in any deceitful conduct or put her name into shame.<sup>[8]</sup>

In a Report and Recommendation<sup>[9]</sup> dated May 6, 2014, the Investigating Commissioner of the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) recommended that Tumaliuan be ordered to reconstitute Kare and to transfer full title of the subject vehicle to the latter by causing its registration in the latter's name at Tumaliuan's expense. If such registration is not possible, it advised the parties to mutually rescind the contract of sale of said vehicle with Kare returning the vehicle to Tumaliuan and Tumaliuan returning the P1,000,000.00 consideration of such sale. As for Tumaliuan, the Investigating Commissioner recommended that she be suspended from the practice of law for a period of six (6)

months in view of the fact she has been a lawyer with good standing and the fact that the nature of her misrepresentation is not so grave.<sup>[10]</sup>

In a Resolution<sup>[11]</sup> dated October 11, 2014, the Board of Governors (*BOG*) of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner suspending Tumaliuan from the practice of law for period of one (1) year. Subsequently, in another Resolution<sup>[12]</sup> dated October 28, 2015, the BOG denied Tumaliuan's Motion for Reconsideration there being no cogent reason to reverse the previous findings.

### ***The Court's Ruling***

After a judicious review of the instant case, We concur with the recommendation of the Investigating Commissioner as affirmed by the BOG, that Atty. Tumaliuan should be held administratively liable.

At the outset, the Court refrains from condemning Kare for stating in her complaint that her address is at the residence subject of the sale when she no longer resided therein. As the Investigating Commissioner disposed, good faith is well to credit to her in believing that until the title of the vehicle which formed part of the purchase price for the said house and lot is transferred to her, the sale has not yet been fully consummated and she can still validly claim ownership over the said real property.<sup>[13]</sup>

Neither shall We sustain Tumaliuan's contention that Kare is guilty of forum shopping. Time and again, the Court has ruled that forum shopping consists of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It may also consist in a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another forum other than by appeal or special civil action of *certiorari*. The most important factor in determining the existence of forum shopping is the vexation caused the courts and parties-litigants by a party who asks different courts to rule on the same or related causes or grant the same or substantially the same reliefs.<sup>[14]</sup>

Accordingly, forum shopping may be committed in three ways: (1) through *litis pendentia* - filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolve yet; (2) through *res judicata* - filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and (3) splitting of causes of action - filing multiple cases based on the same cause of action but with different prayers - the ground to dismiss being either *litis pendentia* or *res judicata*. Common in these is the identity of causes of action defined as "the act or omission by which a party violates the right of another."<sup>[15]</sup>

Here, Kare filed two (2) complaints against Tumaliuan. *First*, she filed the instant complaint for disbarment dealing with the proper administrative liability, if any, incurred by Tumaliuan for her acts prejudicial to the legal profession and in violation of the Code of Professional Responsibility. Specifically, she alleged that Tumaliuan purchased her house and lot in exchange for a vehicle that turned out to be encumbered. *Second*, Kare filed a criminal complaint for estafa before the City Prosecutor for violation of Article 315, par. 3(a) of the Revised Penal Code dealing as it does her alleged inducement of Kare, by means of deceit, to enter into the sale of