

EN BANC

[A.C. No. 11111, January 10, 2018]

IN RE: G.R. NO. 157659 "ELIGIO P. MALLARI V. GOVERNMENT SERVICE INSURANCE SYSTEM AND THE PROVINCIAL SHERIFF OF PAMPANGA."

DECISION

JARDELEZA, J.:

This is an administrative case involving a member of the bar. In our Decision in G.R. No. 157659 entitled *Eligio P. Mallari v. Government Service Insurance System and the Provincial Sheriff of Pampanga*^[1] promulgated on January 25, 2010, this Court directed the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP-CBD) to investigate respondent Atty. Eligio P. Mallari (respondent) for what appear to be: (1) his deliberate disregard of the Rules of Court and jurisprudence pertinent to the issuance and implementation of the writ of possession under Act No. 3135,^[2] as amended; and (2) his witting violations of the Lawyer's Oath and the Code of Professional Responsibility (CPR).^[3]

The facts leading to this disciplinary action, as found by this Court in G.R. No. 157659, are as follows:

In 1968, respondent obtained two loans from the Government Service Insurance System (GSIS) in the total amount of P34,000. These loans were secured by mortgages over two parcels of land registered under his and his wife's names. Eventually, respondent was unable to meet his obligations to the GSIS, which prompted the latter to remind him to settle his account.^[4]

On March 21, 1984, the GSIS applied for the extrajudicial foreclosure of the mortgage due to respondent's failure to settle his account. Respondent, however, was able to stall this by requesting for a final computation of his outstanding account and persuading the Sheriff to hold the publication of the foreclosure notice in abeyance. On December 13, 1984, the GSIS responded to his request and rendered a detailed explanation of the account. On May 30, 1985, it sent another updated statement of account. For failing to settle his account, the GSIS finally commenced extrajudicial foreclosure proceedings on respondent's mortgaged properties on July 21, 1986.^[5]

On August 22, 1986, respondent filed a complaint for injunction with application for preliminary injunction against the GSIS and the Provincial Sheriff of Pampanga in Branch 44 of the Regional Trial Court (RTC), in San Fernando, Pampanga. This was docketed as Civil Case No. 7802.^[6] The RTC ultimately decided Civil Case No. 7802 in his favor. Upon appeal by the GSIS, the CA reversed the RTC on March 27, 1996. This Court, in G.R. No. 124468, denied respondent's petition for review on *certiorari*

on September 16, 1996, as well as his motion for reconsideration on January 15, 1997. As a result, the CA Decision dated March 27, 1996 became final and executory, rendering unassailable the extrajudicial foreclosure and auction sale held on September 22, 1986, and the issuance of titles in the name of the GSIS.^[7]

On September 2, 1999, the GSIS filed an *ex parte* motion for execution and/or a writ of possession. The RTC issued a writ of execution *cum* writ of possession on October 21, 1999, ordering the Sheriff to place the GSIS in possession of the properties.^[8] The Sheriff failed to serve the writ, however, partly because of respondent's request for an extension of time within which to vacate the properties. Respondent, however, instead filed a motion for reconsideration and/or to quash the writ of execution on March 27, 2000.^[9]

Respondent also filed a case for consignation with a prayer for writ of preliminary injunction or temporary restraining order against the GSIS and the provincial Sheriff in the RTC in San Fernando, Pampanga. This case, docketed as Civil Case No. 12053,^[10] was dismissed by the RTC on November 10, 2000 on the ground of *res judicata*, impelling respondent to appeal the dismissal to the CA.^[11]

Meanwhile, in Civil Case No. 7802, respondent filed: (1) a motion dated April 5, 2000 to hold the GSIS, *et al.* in contempt of court for painting the fence of the properties during the pendency of his motion for reconsideration and/or to quash the writ of execution; and (2) a motion dated April 17, 2000 to hold the GSIS and its local manager Arnulfo B. Cardenas in contempt of court for ordering the electric company to cut off electric services to the properties during the pendency of his motion for reconsideration and/or quash the writ of execution.^[12]

Eventually, Civil Case No. 7802 was re-assigned to Branch 48, whose Presiding Judge denied the motions for contempt of court on July 30, 2001 and directed the Branch Clerk of Court to cause the re-implementation of the writ of execution *cum* writ of possession dated October 21, 1999. Respondent sought reconsideration but this was denied on February 11, 2002.^[13]

Respondent assailed the orders denying his motions for contempt, the order causing the re-implementation of the writ of execution *cum* writ of possession, and the denial of his motion for reconsideration with the CA. The CA, however, denied his petition for *certiorari*.^[14]

Respondent brought the matter before us in G.R. No. 157659, where we affirmed the CA's Decision. We held that the issuance of the writ of possession in an extrajudicial foreclosure sale is purely ministerial.^[15] We further stressed that respondent, as a lawyer, should have known that, as a *non-redeeming* mortgagor, he had no more right to challenge the issuance of the writ of execution *cum* writ of possession upon the *ex parte* application of the GSIS, especially after the consolidation of ownership of the properties in the GSIS.^[16] Thus, his actions can only be tainted by bad faith.^[17] This Court further agreed with the CA's observation that the petition before it is "part of the dilatory tactics x x x to stall the execution of a final and executory decision in Civil Case No. 7802 which has already been resolved with finality by no less than the highest tribunal of the land."^[18] Thus, we

deemed it proper to direct the IBP-CBD to conduct an investigation on respondent, the pertinent portion of which we quote:

The Committee on Bar Discipline of the Integrated Bar of the Philippines is directed to investigate the petitioner for what appear to be (a) his deliberate disregard of the *Rules of Court* and jurisprudence pertinent to the issuance and implementation of the writ of possession under Act No. 3135, as amended; and (b) his witting violations of the Lawyer's Oath and the *Code of Professional Responsibility*.

SO ORDERED.^[19] (Italics in the original.)

On February 17, 2010, the IBP-CBD notified respondent of the Decision in G.R. No. 157659 and required him to file his verified answer.^[20]

In the meantime, respondent's motion for reconsideration of the Decision in G.R. No. 157659 was denied with finality by this Court on April 28, 2010.^[21]

In his answer to the disbarment complaint,^[22] respondent claims that he did not deliberately disregard the Rules of Court and jurisprudence relative to the issuance and implementation of the writ of possession, as well as the Lawyer's Oath and the CPR.^[23] He maintains that he is still the owner of the unlawfully foreclosed properties because: (1) the GSIS' action for mortgage has prescribed since more than 10 years had lapsed since the contracting of the obligations;^[24] (2) he still has in his favor the one year right of redemption, to be counted from February 22, 1997, the finality of the decision in Civil Case No. 7802;^[25] (3) he preserved his right of redemption by effecting a valid tender of payment and consignation to the GSIS on May 28, 1997;^[26] and (4) due to GSIS' refusal to receive his payment, he filed the case for consignation (Civil Case No. 12053) on March 27, 2000.^[27] Hence, respondent concludes that, as owner of the properties, he has the right to exclude any person from its enjoyment and disposal and may use such reasonably necessary force as allowed under Article 429 of the Civil Code.^[28] In any case, he asserts that all the pleadings in this case were signed by his lawyer, Atty. Andres Ocampo, except for two: (1) reply to GSIS dated September 11, 2003; and (2) petition for review in G.R. No. 157659.^[29]

The IBP-CBD, in their Report and Recommendation,^[30] found that the means employed by respondent are dilatory moves to delay the execution of the judgment in favor of the GSIS. In the process, he violated his Lawyer's Oath and Rule 10.3, Canon 10 of the CPR. The IBP-CBD thus recommended that respondent be meted a penalty of suspension from the practice of law for at least one year.^[31]

In its Resolution No. XX-2013-513,^[32] the IBP Board of Governors adopted the findings and recommendation of IBP Commissioner Oliver A. Cachapero. It also denied respondent's subsequent motion for reconsideration in Resolution No. XXI-2015-368. ^[33]

These Resolutions, together with the records of the case, were transmitted to this Court for final action, pursuant to Rule 139-B, Section 12(b).^[34]

We adopt the findings of the IBP Board of Governors on respondent's unethical conduct, but modify the penalty in accord with recent jurisprudence.

A lawyer must never be blinded by the cause of his client at the expense of justice, even if the latter turned out to be himself. He must never overlook that as officer of the court, he is primarily called upon to assist in the administration of justice.^[35] Often designated as vanguards of our legal system, lawyers are called upon to protect and uphold truth and the rule of law.^[36] They are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.^[37]

In this case, the judgment in favor of the GSIS concerning the validity of the extrajudicial foreclosure proceedings had long become final and executory in G.R. No. 124468. Despite this, respondent, with the single purpose of delaying the execution of the judgment by the winning party, took the following series of actions which effectively obstructed the execution of a final and executory judgment: (1) he caused the Sheriff to fail in his service of the writ of possession upon his representation that the GSIS had agreed to his request for extension of time to vacate the premises; yet, he did not vacate the premises and instead filed a motion for reconsideration and/or to quash the writ of execution; (2) he commenced a second case against the GSIS and the Provincial Sheriff before the RTC in San Fernando, Pampanga for consignation coupled with a prayer for a writ of preliminary injunction or temporary restraining order, knowing fully well that his right to redeem has expired; and (3) he went on to file a motion for contempt against the GSIS, *et al.* for painting the fence of the property, and for ordering the electric company to cut off electric service, despite knowledge that the GSIS' ownership over the properties has been upheld.

This Court, unable to turn a blind eye to the maneuverings employed by respondent, previously observed:

Verily, the petitioner wittingly adopted his afore-described worthless and vexatious legal maneuvers for no other purpose except to delay the full enforcement of the writ of possession, despite knowing, being himself a lawyer, that as a non-redeeming mortgagor he could no longer impugn both the extrajudicial foreclosure and the *ex parte* issuance of the *writ of execution cum writ of possession*; and that the enforcement of the duly-issued writ of possession could not be delayed. He thus deliberately abused court procedures and processes, in order to enable himself to obstruct and stifle the fair and quick administration of justice in favor of mortgagee and purchaser GSIS.

His conduct contravened Rule 10.03, Canon 10 of the *Code of Professional Responsibility*, by which he was enjoined as a lawyer to "observe the rules of procedure and x x x not [to] misuse them to defeat the ends of justice." By his dilatory moves, he further breached and dishonored his Lawyer's Oath, particularly:

x x x I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my