

EN BANC

[A.C. No. 11385, March 14, 2017]

**ORTIGAS PLAZA DEVELOPMENT CORPORATION, REPRESENTED
BY JANICE MONTERO, COMPLAINANT, VS. ATTY. EUGENIO S.
TUMULAK, RESPONDENT.**

D E C I S I O N

PER CURIAM:

Under the Lawyer's Oath and the *Code of Professional Responsibility*, a lawyer is sworn to respect the law and legal processes, and any violation thereof merits condign disciplinary action against the lawyer.

The present complaint asks for the disbarment of Atty. Eugenio S. Tumulak for his participation in the forcible intrusion into the complainant's property.

Antecedents

Complainant Ortigas Plaza Development Corporation owned the parcel of land located in Ortigas Avenue Extension, Pasig City and covered by Transfer Certificate of Title No. PT-126797 of the Registry of Deeds of Rizal (property).

The complainant alleges that at around 11:00 a.m. of November 29, 2012, Atty. Tumulak, accompanied by uniformed guards of the Nationwide Security Agency, Inc., unlawfully entered and took control of the entrance and exit of the property. It appears that prior to the incident, Atty. Tumulak had furnished several documents to the complainant, including the deed of assignment executed by one Henry F. Rodriguez as the administrator of the Estate of the late Don Hermogenes R. Rodriguez designating Atty. Tumulak as an assignee.^[1] The documents furnished by Atty. Tumulak were all related to the intestate proceedings of the Estate of the late Don Hermogenes Rodriguez docketed as S.P. No. IR-1110 of the Regional Trial Court, Branch 34, in Iriga City (RTC), which involved the claim of the heirs of the late Don Hermogenes Rodriguez to several parcels of land situated all over the country, including the Provinces of Rizal, Quezon, and Bulacan, and Quezon City, Caloocan City, Pasay City, Antipolo City, Muntinlupa City, Parañaque City, Marikina City, Baguio City, Angeles City, San Fernando City and Tagaytay City.^[2]

The complainant charges Atty. Tumulak with deceit, dishonesty and fraud for claiming to have coordinated with the proper government agencies prior to the illegal and forcible intrusion.^[3] The complainant manifests that as a lawyer, Atty. Tumulak ought to know that the claim of his principal in the property was barred by *res judicata* due to the valid issuance of a Torrens title under its name. Accordingly, his conduct constituted conduct unbecoming of a lawyer deserving of sanction.^[4]

In his answer to the complaint,^[5] Atty. Tumulak denies having been present when the security guards of Nationwide Security Agency entered the complainant's property. He insists that the allegations against him were pure hearsay because Ms. Montero, the representative of the complainant, had no personal knowledge of the incident; that the documents he had furnished to the complainant included records of the intestate proceedings in the RTC involving the Estate of the late Don Hermogenes Rodriguez and Antonio Rodriguez; that he had no hand in procuring the documents; that he did not himself enter the property; and that the entry into the property was effected by the sheriff pursuant to a writ of execution.

Report and Recommendation of the Integrated Bar of the Philippines (IBP)

After due hearing, IBP Commissioner of Bar Discipline Ricardo M. Espina submitted his Report and Recommendation,^[6] wherein he found Atty. Tumulak to have violated Rules 1.01 and 1.02, Canon 1 of the *Code of Professional Responsibility*. Commissioner Espina recommended the suspension of Atty. Tumulak from the practice of law for two years.

On October 28, 2015, the IBP Board of Governors issued Resolution No. XXII-2015-57 adopting the findings and recommendation of Commissioner Espina^[7] viz.:

RESOLUTION NO. XXII-2015-57 CIBD Case No. 13-3707 Ortigas Plaza Dev't Corp. vs. Atty. Eugenio S. Tumulak

RESOLVED to ADOPT the findings of facts and recommended penalty of 2 years suspension of Atty. Eugenio S. Tumulak by the Investigating Commissioner.

Issue

Did Atty. Tumulak violate Rules 1.01 and 1.02, Canon 1 of the *Code of Professional Responsibility* when he facilitated the implementation of the writ of execution and the entry into the complainant's property?

Ruling of the Court

Atty. Tumulak deserves to be severely sanctioned for violating the Lawyer's Oath and the *Code of Professional Responsibility*.

Pertinent portions of Commissioner Espina's Report and Recommendation, which adequately illustrated Atty. Tumulak's transgressions, are worth quoting verbatim, viz.:

We enumerate respondent lawyer's violation of the following rules/principles when he led the forcible intrusion into OPDC office in Pasig City:

- a) **Atty. Tumulak knew, or ought to know, that property claims based on Spanish title can no longer be cited as legitimate basis for ownership as of 16 February 1976 by virtue of Presidential Decree No. 892;**
- b) Respondent lawyer, as a long-time practitioner (admitted to the Bar in 1971), **is presumed to know that the Supreme Court has promulgated a case specifically addressing the fake titles arising from spurious "Deed of Assignment" of the supposed Estate of Don Hermogenes Rodriguez. This is the 2005 case of *Evangelista, et al. vs. Santiago* [G.R. No. 157447; April 29, 2005] where the same *modus* as the one adopted by respondent lawyer, was used by an "assignee" in claiming properties located in Parangue, Las Pinas, Muntinlupa, Cavite, Batangas, Pasay, Taguig, Makati, Pasig, Mandaluyong, Quezon City, Caloocan, Bulacan, and Rizal, allegedly as part of the Estate of Don Hermogenes Rodriguez;**
- c) x x x x;
- d) While respondent lawyer claims that the "deed of assignment" in his favor has a consideration, unfortunately we did not see any agreed consideration in the document. If there is no monetary consideration, it will be treated as a donation with the corresponding payable taxes. Respondent lawyer's documents don't show that taxes have been paid for the document to be legally binding;
- e) Torrens title cannot be attacked collaterally but can only be questioned in a principal action x x x. If respondent lawyer thinks that OPDC's title on the Pasig property is questionable, he could have filed an action to annul OPDC's title and not bring in the cavalry, so to speak, in the form of uniformed security guards, to take over the property; and
- f) We find respondent's actions highly questionable and contrary to legal protocol; (i) the court documents were issued by the RTC-Iriga City, Br. 94; (ii) it "affects" a property located in Pasig City; (iii) respondent lawyer became the "assignee" of a Pasig City property; (iv) no taxes were paid for the "assignment"; (v) assistance of the Sheriff of Pasig

was not enlisted by respondent, instead, he enlists the help of the Sheriff of Manila; (vi) all that the Sheriff of Manila did was to deliver the RTC-Iriga, Br. 34 court documents to complainant but with a twist; the Sheriff and respondent lawyer were escorted by a phalanx of security guards; (vii) the uniformed guards, obviously upon instruction, took over and/or controlled the gates of OPDC offices with attendant force and intimidation. Respondent lawyer's claimed innocence cannot prevail over these illegalities of which he, or his agents, had a hand.

With the above highly questionable acts totally irreconcilable with a seasoned practitioner like respondent lawyer, we find Atty. Eugenio S. Tumalak liable for violation of Canon 1, Code of Professional Responsibility, specifically Rule 1.01 and 1.02 thereof. (Bold underscoring supplied for emphasis)

Commissioner Espina correctly observed that the Court in the 2005 ruling in *Evangelista v. Santiago*^[8] had already enjoined the successors and heirs of the late Don Hermogenes Rodriguez from presenting the Spanish title as proof of their ownership in land registration proceedings, as follow:

In their Complaint, petitioners claimed title to the Subject Property by virtue of their actual and continuous possession of the same since time immemorial, by themselves and through their predecessors-in-interest. Yet, the Deeds of Assignment executed by Ismael Favila in their favor, attached to and an integral part of their Complaint, revealed that petitioners predecessors-in-interest based their right to the Subject Property on the Spanish title awarded to Don Hermogenes Rodriguez.

There existed a contradiction when petitioners based their claim of title to the Subject Property on their possession thereof since time immemorial, and at the same time, on the Spanish title granted to Don Hermogenes Rodriguez. Possession since time immemorial carried the presumption that the land had ***never been part of the public domain or that it had been private property even before the Spanish conquest***. If the Subject Property was already private property before the Spanish conquest, then it would have been beyond the power of the Queen of Spain to award or grant to anyone.

The title to and possession of the Subject Property by petitioners predecessors-in-interest could be traced only as far back as the Spanish title of Don Hermogenes Rodriguez. Petitioners, having acquired portions of the Subject Property by assignment, could acquire no better title to the said portions than their predecessors-in-interest, and hence, their title can only be based on the same Spanish title.

Respondent maintained that P.D. No. 892 prevents petitioners from invoking the Spanish title as basis of their ownership of the Subject

Property. P.D. No. 892 strengthens the Torrens system by discontinuing the system of registration under the Spanish Mortgage Law, and by categorically declaring all lands recorded under the latter system, not yet covered by Torrens title, unregistered lands. It further provides that within six months from its effectivity, all holders of Spanish titles or grants should apply for registration of their land under what is now P.D. No. 1529, otherwise known as the Land Registration Decree. Thereafter, Spanish titles can no longer be used as evidence of land ownership in any registration proceedings under the Torrens system. Indubitably, P.D. No. 892 divests the Spanish titles of any legal force and effect in establishing ownership over real property.

P.D. No. 892 became effective on 16 February 1976. The successors of Don Hermogenes Rodriguez had only until 14 August 1976 to apply for a Torrens title in their name covering the Subject Property. In the absence of an allegation in petitioners' Complaint that petitioners predecessors-in-interest complied with P.D. No. 892, then it could be assumed that they failed to do so. Since they failed to comply with P.D. No. 892, then the successors of Don Hermogenes Rodriguez were already enjoined from presenting the Spanish title as proof of their ownership of the Subject Property in registration proceedings.

Registration proceedings under the Torrens system do not create or vest title, but only confirm and record title already created and vested. By virtue of P.D. No. 892, the courts, in registration proceedings under the Torrens system, are precluded from accepting, confirming and recording a Spanish title. Reason therefore dictates that courts, likewise, are prevented from accepting and indirectly confirming such Spanish title in some other form of action brought before them (*i.e.*, removal of cloud on or quieting of title), only short of ordering its recording or registration. To rule otherwise would open the doors to the circumvention of P.D. No. 892, and give rise to the existence of land titles, recognized and affirmed by the courts, but would never be recorded under the Torrens system of registration. This would definitely undermine the Torrens system and cause confusion and instability in property ownership that P.D. No. 892 intended to eliminate.^[9]

Moreover, in *Santiago v. Subic Bay Metropolitan Authority*,^[10] the Court denied the petition of the successors of the late Don Hermogenes Rodriguez by applying the principle of *stare decisis*, ruling therein that the applicable laws, the issues, and the testimonial and documentary evidence were identical to those in the situation in *Evangelista v. Santiago*, thusly:

The present petition is substantially infirm as this Court had already expressed in the case of *Nemencio C. Evangelista, et al. v. Carmelino M. Santiago*, that the Spanish title of Don Hermogenes Rodriguez, the *Titulo de Propiedad de Torrenos* of 1891, has been divested of any evidentiary value to establish ownership over real property.

Victoria M. Rodriguez, Armando G. Mateo and petitioner Pedro R.