

## FIRST DIVISION

[ A.C. No. 8574, August 16, 2017 ]

**CARMELO IRINGAN, COMPLAINANT, VS. ATTY. CLAYTON B. GUMANGAN, RESPONDENT.**

### DECISION

**LEONARDO-DE CASTRO, J.:**

This is an administrative complaint for disbarment or suspension filed by complainant Carmelo Iringan (Carmelo) against respondent Atty. Clayton B. Gumangan (Atty. Gumangan) relative to Civil Case No. 518-09, entitled *Sps. Renato and Carmen A. Iringan v. Carmelo A. Iringan*, for Illegal Detainer and Ejectment with Damages, before the Municipal Trial Court in Cities (MTCC) of the City of Tabuk, Kalinga.

Civil Case No. 518-09 was instituted before the MTCC by spouses Renato (Renato) and Carmen Iringan (spouses Iringan) against Carmelo, who is Renato's brother. The spouses Iringan alleged in their complaint that they are the owners of a piece of land, with an area of about 625 square meters, located in Tabuk, Kalinga, registered under Original Certificate of Title No. P-8864<sup>[1]</sup> in Renato's name. A two-storey structure stands on said piece of land, which was used as a restaurant with the name "Emilia's Kitchenette." Renato acquired the right to operate said restaurant from his mother, Lourdes Iringan, by virtue of a Deed of Assignment to Operate Establishments<sup>[2]</sup> dated January 19, 1982, for the consideration of P5,000.00. Pursuant to a Contract of Lease<sup>[3]</sup> dated December 30, 2005, Renato agreed to lease to Carmelo the land and the two-storey building thereon (collectively referred to herein as the premises) for a period of one year, for a monthly rental of P5,000.00. The Contract of Lease was notarized by Atty. Gumangan also on December 30, 2005. The lease expired but Carmelo continued to possess the premises upon spouses Iringan's tolerance. In September 2008, the spouses Iringan demanded that Carmelo vacate the premises but to no avail. A Final Demand dated April 1, 2009 was served upon Carmelo on April 2, 2009, signed by Atty. Gumangan, with Renato's approval and conformity. Carmelo, however, still refused to vacate the premises. The barangay heard the dispute between the spouses Iringan and Carmelo on April 29, 2009 but no settlement was reached. Thus, the spouses Iringan had no other recourse but to file Civil Case No. 518-09 for Illegal Detainer and Ejectment with Damages against Carmelo.

In his defense, Carmelo averred that he and Renato are brothers. The premises actually belonged to their late parents Sixto and Lourdes Iringan, and upon their parents' deaths, the premises descended to Carmelo, Renato, and their other siblings. Hence, Renato is not the sole owner of the premises even though the certificate of title to the land is registered in his name alone. Renato is a mere trustee of the premises for his siblings. The Deed of Assignment to Operate Establishments did not vest title to the premises upon the spouses Iringan as this

was in derogation of the succession rights of Renato's siblings. Carmelo further claimed that the Contract of Lease for the premises was spurious as he had never entered into such a contract with Renato. Carmelo asserted that he did not sign the Contract of Lease nor did he appear before Atty. Gumangan who notarized the same.

In its Decision<sup>[4]</sup> dated September 24, 2009, the MTCC rendered a Decision in favor of the spouses Iringan. Particularly on the matter of the Contract of Lease, the MTCC found:

THERE IS A VALID CONTRACT OF LEASE EXECUTED BY THE PARTIES

Exhibit "D" of the [spouses Iringan] is the alleged "Spurious" Contract of Lease. It is a document duly notarized before a Notary public. It was executed with all the formalities required by law and duly acknowledged before Atty. Clayton Gumangan. This Contract of Lease is a public document, which needs no further proof of its content and is entitled to much faith and confidence, unless clear evidences show otherwise. This is where [Carmelo] failed. [Carmelo] offered no evidence tending to show that said document is indeed spurious. What we have, are the allegations of [Carmelo] and his witnesses, which allegations are, to say the least, self-serving and biased. Allegations are not proofs.

On this point, the [spouses Iringan] submitted the Affidavit of the Notary Public before whom the document was executed and acknowledged. In said Affidavit, Atty. Gumangan affirmed that he prepared the document and that Carmelo and Renata Iringan signed the contract of lease in his presence. There is no showing that Atty. Gumangan was telling a lie, or that he was ill-motivated. His affidavit rings true and is credible.

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Then too, we have the affidavit of the instrumental witnesses, in the person of Hilda Langgaman and Narcisa Padua (Exhibit "Q"). They were the witnesses to the execution of the contract at the office of Atty. Gumangan. They saw with their own eyes Carmelo and Renato signing the Contract of Lease. These are impartial witnesses. In order to discredit the allegations of the Affidavit of Atty. Gumangan, [Carmelo] submitted the Affidavit of Atty. Mary Jane Andomang to the effect that Atty. Clayton Gumangan has not submitted his notarial register containing the questioned document. But the non-submission of Atty. Gumangan of his notarial register does not preclude the fact that said document was executed and notarized as claimed by the affiants. If any, it should be Atty. Gumangan who is brought to task for his negligence, not the [spouses Iringan]. The failure of Gumangan to submit his register should not prejudice the cause of the [spouses Iringan]. This Affidavit of Atty. Andomang only proved that Atty. Gumangan failed to submit his register. It cannot disprove the due execution of the Contract of lease.

Much noise has been made on the fact that the document was allegedly

executed in December 2005 but that the Community Tax Receipt of Renato was dated January 17, 2006. Also, that the CTR of [Carmelo] has not been indicated in the said document. Again, to [Carmelo], this smacks of fraud.

The court is not convinced. This may have been a typographical error attributable to human frailties. The intent to defraud or falsify was not shown by [Carmelo] through independent and credible evidences. Fraud is not assumed.<sup>[5]</sup>

The MTCC decreed:

**WHEREFORE**, judgment is hereby rendered in favor of the [spouses Iringan] and against Carmelo Iringan, ordering [Carmelo] to;

1. VACATE immediately the property in dispute and turnover peacefully its possession to the [spouses Iringan];
2. Pay FIVE THOUSAND (P5,000.00) PESOS a month from April 2, 2009 up to the time the finality of Judgment with interest at 6% per annum;
3. The total amount awarded above shall earn legal interest at 12% per annum from the time judgment became final until the same shall have been fully paid;
4. PAY TWENTY THOUSAND (P20,000.00) PESOS as attorney's fees and cost of litigation; and
5. [P]ay the cost of the suit.<sup>[6]</sup>

Carmelo filed an appeal with the Regional Trial Court (RTC) of Bulanao, Tabuk City, Kalinga, Branch 25, docketed as Civil Case No. 762. In a Decision<sup>[7]</sup> dated May 25, 2010, the RTC affirmed *in toto* the MTCC judgment. The RTC eventually issued a Writ of Execution and an Alias Writ of Execution dated November 2, 2010 and February 22, 2011, respectively, for the implementation of its judgment.

In the meantime, while Civil Case No. 762 was still pending before the RTC, Carmelo instituted on April 5, 2010, before the Court, through the Office of the Bar Confidant (OBC), the present administrative complaint<sup>[8]</sup> against Atty. Gumangan, alleging as follows:

3. That [Atty. Gumangan] is a practicing attorney and a notary public, principally based [in] Tabuk, Kalinga;

4. That sometime on December 30, 2005, a "Contract of Lease" was purportedly executed by and between [Carmelo] and Renato Iringan; This document was prepared and notarized by [Atty. Gumangan];
5. That the aforementioned "Contract of Lease" became the principal subject of a Civil Case between [Carmelo] and Sps. Renato and Carmen Iringan docketed as Civil Case No. 518-09; The original copy of the pertinent Summons (with the Complaint and annexes thereto) is made Annex "A" and appended therewith is a certified machine copy of the said "Contract of Lease" (Annex "C" of the Complaint);
6. That the purported "Contract of Lease" is entirely spurious and fraudulent; [Carmelo] never executed such instrument and did not appear before [Atty. Gumangan] for its due subscription under oath; [Carmelo] never ever entered into any lease contract with Renato A. Iringan whether verbal or in writing;
7. That it is too obvious that the alleged Lease Contract prepared and notarized by [Atty. Gumangan] is fraudulent since by simple examination, the same was **executed and subscribed before [Atty. Gumangan] on December 30, 2005, when in fact Renato Iringan's CTC (08768743) was issued on January 17, 2006;** [Carmelo's] own CTC **does not appear thereon, meaning that he never appeared to execute it;** That besides not appearing before [Atty. Gumangan], [Carmelo] has not been or seen the alleged witnesses to the contract;
8. That more importantly, [Carmelo] had **not known, met or had any transaction with [Atty. Gumangan]; He only saw him for the first time** in the Municipal Trial Court, Tabuk, Kalinga, during one of the proceedings in Civil Case No. 518-09 where [Atty. Gumangan] happened to be present in attendance;
9. Moreover, the said "Contract of Lease" was never filed with the notarial report of [Atty. Gumangan] with the Office of the Clerk of Court of Kalinga.; The Sworn Affidavit of Atty. Mary Jane A. Andomang (Regional Trial Court, Branch 25, Clerk of Court) made Annex "B" hereof attests to this fact;
10. That the very blatant act of [Atty. Gumangan] in preparing and notarizing said "Contract of Lease" bespeaks of wanton and willful violation of the Canons of Professional Responsibility for lawyers; As officers of the Court they are mandated not to involve themselves in fraudulent and deceitful acts, to the grave damage and prejudice of private individuals;
11. That [Atty. Gumangan] had not acted with honesty and faithfulness to the responsibilities and duties of his profession; He must then be sanctioned and subjected to disciplinary action by this Honorable Supreme Court.<sup>[9]</sup>

Carmelo prayed that Atty. Gumangan "be DISBARRED/SUSPENDED from the practice of law, and with all the attendant accessory penalties and fines to be justly imposed."<sup>[10]</sup>

In support of his allegations, Carmelo attached, among other documents, the purported Contract of Lease between him and Renato and the Affidavit<sup>[11]</sup> dated September 3, 2009 of Mary Jane A. Andomang (Andomang), RTC Clerk of Court VI, certifying that Atty. Gumangan "did not submit his Notarial Report and a copy of a 'Contract of Lease,' appearing as Doc. No. 191, Page No. 39, Book No. X, Series of 2005."

Atty. Gumangan, in his Comment/Answer,<sup>[12]</sup> asserted that Carmelo instituted the instant administrative complaint to harass and embarrass him, and to extricate himself, Carmelo, from the felonious acts of dispossessing his very own brother of the latter's property.

Atty. Gumangan admitted that he notarized the Contract of Lease, but maintained that Carmelo, together with Renato, personally executed said Contract before Atty. Gumangan and in the presence of two witnesses, namely, Hilda Langgaman (Langgaman) and Narcisa Padua (Padua). Atty. Gumangan attached to his Comment/Answer the Joint Affidavit<sup>[13]</sup> dated July 20, 2009 in which Langgaman and Padua affirmed that they were personally present at Atty. Gumangan's office when Carmelo and Renato signed the Contract of Lease, and that they saw with their own eyes Carmelo signing said Contract. Atty. Gumangan likewise attached to his Comment/Answer the Affidavit<sup>[14]</sup> dated July 9, 2009 executed by Carmelo's daughter-in-law, Cathelyn Bawat Iringan (Cathelyn), attesting to the existence and implementation of the Contract of Lease:

That as trustee of the Emilia's Kitchenette, I was instrumental in the payment of rentals over said Kitchenette to plaintiffs [spouses Iringan] thus:

a) In June, 2007, I withdrew the sum of Twenty-five Thousand (P25,000.00) Pesos from the Rural Bank of Rizal, Kalinga and used it for the medical operation of Inez Gamad; the amount was treated as rentals of Emilia's Kitchenette covering the months of November & December, 2006, January, February and March of year 2007;

b) I paid Ten Thousand (P10,000.00) Pesos on August 23, 2007 for our rental of April and May 2007;

c) I paid rental of Thirty Thousand (P30,000.00) Pesos to Carmen Iringan, which was used for the eye treatment of Renato Iringan;

d) I issued a check in the sum of One Hundred Thousand (P100,000.00) Pesos, given to Engr. Federico Iringan, son of [spouses Iringan]; Sixty Thousand (P60,000.00) Pesos was used to cover rentals of the Kitchenette and Forty Thousand (P40,000.00) Pesos was personal to Federico[.]