

FIRST DIVISION

[A.C. No. 8269, December 11, 2013]

**PHESCHEM INDUSTRIAL CORPORATION, COMPLAINANT, VS.
ATTYS. LLOYD P. SURIGAO AND JESUS A. VILLARDO III,
RESPONDENTS.**

DECISION

REYES, J.:

This is a Complaint for Disbarment^[1] filed by Pheschem Industrial Corporation (Pheschem) on May 11, 2009 against lawyers Lloyd P. Surigao (Atty. Surigao) and Jesus A. Villardo III (Atty. Villardo) (respondents), for gross, malicious and oppressive violation of their duties under the Code of Professional Responsibility. On September 30, 2009, the respondents filed their comment,^[2] and on November 23, 2009, this Court referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[3]

Factual Antecedents

Pheschem is a domestic corporation engaged in the manufacture of hydrated lime, an industrial chemical, and has been operating a limestone quarry in Palompon, Leyte on a 25-year mining permit since 1985. Toward the end of its said permit, it allegedly encountered harassment from the town officials when it tried to renew the same, although it also surmised that its troubles began after it refused passage through its quarry to the logging trucks owned by the Chairman of *Barangay* Liberty, Palompon, Leyte, Eddie Longcanaya (Chairman Longcanaya). Pheschem claims that it only wanted to avoid any suspicion from the Department of Environment and Natural Resources (DENR) that it was consenting to illegal logging activities in its quarry area. Nonetheless, in retaliation, and without a local ordinance or resolution, Chairman Longcanaya began imposing a fee of P100.00 for each dump truck of Pheschem that entered its quarry site, which Pheschem refused to pay. On May 12, 2008, Chairman Longcanaya led the *barangay* residents in blockading Pheschem's quarry site to prevent its trucks from hauling out limestone to its manufacturing plant in another part of town.

Pheschem sought the help of Atty. Surigao, then Vice-Mayor of Palompon, but instead of helping the former, Atty. Surigao joined the blockade. Not only that, in a dialogue he called between Pheschem and the *barangay* officials, Atty. Surigao harangued Pheschem with a litany of complaints from the *barangay* residents, while ignoring the DENR's certifications that Pheschem committed no violations, as well as DENR's explanation that Pheschem could not be denied an Environmental Compliance Certificate (ECC) as long as it substantially complied with the requirements therefor.

On June 2, 2008, the *Sangguniang Bayan* of Palompon, allegedly upon instigation of

Atty. Surigao, passed Municipal Resolution No. 068-020608,^[4] entitled, “*An Omnibus Opposition to Any and all Re-application of Pheschem Industrial Corporation for Mining Permit or License, or Issuance of an Environmental Compliance Certificate, or Business License, or Mayor’s Permit, Inter Alia.*” Then, on June 27, 2008 Atty. Surigao even appeared as collaborating counsel in a labor case for a dismissed employee of Pheschem named Pablito Moldez.^[5] It appears that Atty. Surigao was also the private counsel of the respondent in G.R. No. 161159, entitled “*Pheschem Industrial Corporation v. Pablito Moldez,*” decided by this Court on May 9, 2005.^[6] Pheschem now insists that Atty. Surigao should have inhibited himself from the *Sangguniang Bayan*’s deliberations on Resolution No. 068-020608 due to conflict of interest.

Unable now to haul limestone from its quarry site in *Barangay* Liberty to its plant, despite being a holder of an ECC from the DENR and a still subsisting mining permit from the Provincial Governor, Pheschem opened a new quarry in *Barangay* Cantandoy, but again Atty. Surigao and other town officials blocked and stopped its operations. Undaunted, Pheschem opened a third quarry, this time in *Barangay* San Miguel, but again the town officials led by Palompon Mayor Eulogio S. Tupa (Mayor Tupa) and joined by Attys. Surigao and Villardo, a *Sangguniang Bayan* member, seized two (2) dump trucks belonging to Pheschem. This was pursuant to a “Cease and Desist Order for the Land Development (Leveling) Project at *Barangay* San Miguel” dated July 14, 2008, issued by Mayor Tupa to Engineer Timoteo Andales (Engr. Andales), Operations Manager of Pheschem. Engr. Andales had obtained an ECC in his name to level a property owned by Jess Tangog (Tangog) in *Barangay* San Miguel, Palompon. Mayor Tupa charged that it was actually Pheschem which was leveling the property, but instead of moving the scraped limestone within the said property to even out the ground surface to prepare the same for residential development, the limestone was hauled to its plant in *Barangay* Cantandoy to make hydrated lime. The aforesaid order reads as follows:

Without necessarily admitting the legality of the issuance of the ECC that was given to you dated 4 July 2008 by EMB Region 8, a clear provision in the said ECC (ECC-r8-0806-070-5010) states that ‘permits/clearances from other concerned agencies shall be secured prior to project implementation;’ (par. 3, p. 4, ECC)

Upon verification in the area, subject-matter of your Land Development (Leveling) Project [of] which you are the proponent located in *Barangay* San Miguel, Palompon, Leyte and [for] which you were issued the above-mentioned ECC, you have already started with your operations sans the above-mentioned condition *sine qua non*.

Moreover, because of your operations now you have already violated other conditionalities in the said ECC, to wit:

1. You have not secured a Development Permit from the LGU ([I][A][3]e, ECC);
2. You have failed to provide silt traps to contain silt-laden run-off from draining to the adjacent road[.]

Moreover importantly, we know that you are not doing leveling activities only. You are actually hauling raw materials (limestone) to be supplied to Pheschem Industrial Corporation for processing into lime at its Cantandoy Plant. By doing so, you have clearly violated Presidential Decree 1586 and Republic Act 7942 (because you know for a fact that Pheschem should have an approved quarry site which should have a separate ECC to be valid). Your application for a Land Development (Leveling) Project is a facade and a vivid circumvention of the aforementioned laws.

Finally, you are the Operations Manager of Pheschem Industrial Corporation and that your application as the contractor/supplier of raw materials (limestone) to your employer violates Municipal Resolution No. 068-020608. Your actions have gravely put into jeopardy the security, safety of the Palompongonans, and the environment of Palompon.

It is in this light that you are AT ONCE TO CEASE AND DESIST from continuing your operation in the area subject-matter of the ECC and/or to haul, transfer, deliver to Pheschem Industrial Corporation any raw materials which you might or will produce because of your leveling activities.

Your continued operation will be an explicit violation of this Order and shall be dealt with accordingly.

The PNP, Palompon, Leyte through P/Insp Judito N. Cinco is directed to immediately serve this Order to Engr. Timoteo Andales at his address as indicated hereinabove.^[7]

On November 25, 2008, Pheschem through its plant manager, Engr. Andales, pleaded with Atty. Surigao to release its trucks, but Atty. Surigao responded by furnishing Pheschem with a copy of Municipal Resolution No. 170-211008, entitled, *"Strongly Requesting the Office of the Mayor to Cancel the Mayor's Permit and/or Business License Issued to Pheschem Industrial Corporation and/or Tomas Y. Tan."*^[8] According to Pheschem, it was at this time that Atty. Surigao demanded as a pre-condition for the release of its trucks that Pheschem pay its workers a cost of living allowance (COLA) and a separation pay of one month's salary per year of service. Pheschem refused the demand.

On December 5, 2008, Pheschem represented by its Plant Manager, Engr. Andales, and Engr. Esperidion C. Pascua, Assistant Plant Manager, filed Special Civil Action (SCA) Case No. 0045-PN with the Regional Trial Court (RTC) of Palompon, Leyte, Branch 17, for "Injunction, Prohibition, Mandamus with Damages, with prayer for immediate issuance of 72-hour and 20-day Temporary Restraining Order (TRO) and Writ of Preliminary Injunction."^[9] Named as respondents were Mayor Tupa, Vice-Mayor Atty. Surigao, the *Sangguniang Bayan* of Palompon, Leyte, represented by Atty. Surigao, Municipal Councilor Atty. Villardo, SPO1 Manolito R. Ilustre, SPO1 Joel M. Suca, Herville V. Pajaron (Pajaron) of the Municipal Environment and Natural Resources Offices (MENRO) of Palompon, HESG German Cliton, Diosdado Perales and *Barangay* Chairman Longcanaya.

On December 8, 2008, the RTC issued a 72-hour TRO as well as commanded the

respondent town officials to release Pheschem's trucks and to stop obstructing its quarrying operations.^[10] The next day, the respondents filed a motion for reconsideration, but on December 22, 2008, the RTC went on to issue a writ of preliminary injunction against the municipal officials of Palompon, including herein respondents, to stop interfering in Pheschem's quarry operations,^[11] to wit:

WHEREFORE, after hearing the pro's and con's of both parties in the above-entitled case on the application of petitioner for preliminary injunction, this court hereby grants the same with the following specific orders.

1. Enjoining the respondent incumbent Municipal Mayor of Palompon and all or any person under his direction, and all the other respondents herein from stopping, interfering, preventing[,] and doing acts of harassments against the herein petitioner or any of its officers, employees and laborers or its vehicles and properties in the operation [of] its quarry sites and plant site in the Municipality of Palompon[.]

2. Prohibiting the Vice-Mayor, Atty. Lloyd Surigao, and the *Sangguniang Bayan* of Palompon from interfering, doing acts of harassments and other acts which will hamper the legitimate operation of petitioner's quarry sites and plant.

3. Enjoining and prohibiting *Barangay* Chairman Eddie Longcanaya from collecting the Php100.00 peso imposition and from further setting up road blocks to prevent petitioner from using the subject road.

SO ORDERED.^[12]

In apparent defiance of the above writ, on January 6, 2009 Atty. Surigao, accompanied by Pajaron, head of Palompon's MENRO, and several policemen, entered Pheschem's quarry site and seized three (3) of its dump trucks.^[13] On January 9, 2009, Mayor Tupa, Atty. Surigao, and Pajaron executed a Joint Complaint Affidavit^[14] seeking to cancel Pheschem's provincial quarry permit. But in a Resolution^[15] dated March 20, 2009, the Office of the Provincial Governor of Leyte dismissed the complaint.

On January 13, 2009, the day Pheschem was to resume its operations at the San Miguel quarry site, it obtained the release of its equipment,^[16] but again on January 16, 2009, the trucks were impounded for the third time in the act of hauling limestone from Tangog's property in *Barangay* San Miguel, Palompon, allegedly for violation of Sections 53 and 55, in relation to Sections 108 and 110, of the Mining Act of 1995, as well as the Municipal Tax Code of 2004, and the conditions of the provincial quarry permit.^[17]

On May 11, 2009, Pheschem filed the instant disbarment complaint against herein respondents, "for gross, malicious and oppressive violation of their duties under the Code of Professional Responsibility." Meanwhile, on July 22, 2009, the RTC issued a resolution in SCA Case No. 0045-PN denying therein respondents' motion to dissolve the preliminary injunction which was premised on the expiration of Pheschem's quarry permit.^[18] The RTC reiterated its order to lift the blockade at Pheschem's

San Miguel quarry and to release the trucks and their accessories impounded by the municipal and police officers. Then on January 15, 2010, the RTC granted Pheschem's motion to enforce its December 22, 2008 and July 22, 2009 orders. On February 5, 2010, the RTC denied therein respondents' motion to inhibit as well as affirmed its Order dated January 15, 2010.^[19]

From the above orders, three *certiorari* petitions were filed in the Court of Appeals (CA), namely: CA-G.R. SP No. 04547, seeking to lift the writ of preliminary injunction and the order to lift the *barangay* road blockade; CA-G.R. SP No. 04592, praying to dismiss SCA Case No. 0045-PN for lack of cause of action; and CA-G.R. SP No. 04901, praying to set aside the RTC order denying the motion to inhibit, ordering the release of Pheschem's trucks and batteries, and reiterating the enforcement of its orders of December 22, 2008, July 22, 2009, January 15, 2010 and February 5, 2010.^[20]

Meanwhile, on January 5, 2011, IBP Investigating Commissioner Rebecca Villanueva-Maala (Commissioner Villanueva-Maala) issued her Report and Recommendation in A.C. No. 8269,^[21] wherein she recommended that the disbarment complaint against the respondents be dismissed for lack of merit, to wit:

From the facts adduced, we find that respondents merely performed their duties as public officials. Misconduct in the discharge of official duties as government official, generally is not disciplinable unless the misconduct of the government official is of such a character as to affect his qualification as a lawyer or to show moral delinquency. In the case at bar, we find the orders issued by respondents in the regular performance of their official duties were all based on the facts, evidence and the law. There is nothing on record that shows that the assailed orders were motivated with malice, ill-intent or bad faith.

PREMISES CONSIDERED, we respectfully recommend that this administrative complaint against **ATTY. LLOYD P. SURIGAO** and **ATTY. JESUS A. VILLARDO III** be **DISMISSED** for lack of merit.

RESPECTFULLY SUBMITTED.^[22] (Citation omitted)

On July 21, 2012, the IBP Board of Governors issued Resolution No. XX-2012-308 adopting and approving IBP Commissioner Villanueva-Maala's report and recommendation:

RESOLUTION NO. XX-2012-308

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Atty. Jesus A. Villardo III

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED[,] the Report and Recommendation of the Investigating Commissioner in 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,