

## FIRST DIVISION

[ A.C. No. 9259, August 23, 2012 ]

**JASPER JUNNO F. RODICA, COMPLAINANT, VS. ATTY. MANUEL "LOLONG" M. LAZARO, ATTY. EDWIN M. ESPEJO, ATTY. ABEL M. ALMARIO, ATTY. MICHELLE B. LAZARO, ATTY. JOSEPH C. TAN, AND JOHN DOES, RESPONDENTS.**

### R E S O L U T I O N

**DEL CASTILLO, J.:**

*"The power to disbar or suspend ought always to be exercised on the preservative and not vindictive principle with great caution and only for most weighty reasons."*

[1]

This is a Complaint<sup>[2]</sup> for disbarment filed by Jasper Junno F. Rodica (Rodica) against Atty. Manuel "Lolong" M. Lazaro (Atty. Manuel), Atty. Edwin M. Espejo (Atty. Espejo), Atty. Abel M. Almario (Atty. Almario), Atty. Michelle B. Lazaro (Atty. Michelle), and Atty. Joseph C. Tan (Atty. Tan) for gross and serious misconduct, deceit, malpractice, grossly immoral conduct, and violation of the Code of Professional Responsibility

#### **Factual Antecedents**

On May 5, 2011, William Strong (Strong), an American, was arrested and detained by the operatives of the Bureau of Immigration. Strong sought the assistance of Philip<sup>[3]</sup> G. Apostol (Apostol), a friend and neighbor, to secure the services of a lawyer. Apostol referred him to Atty. Manuel, who is a partner at the M.M. Lazaro and Associates Law Office (Lazaro Law Office).

Atty. Manuel initially declined because his law office only handles cases of its retained clients and those known to him or any of the associate lawyers.<sup>[4]</sup> However, he was eventually prevailed upon by Apostol who would consider it as a special favor if Atty. Manuel would handle Strong's case. Hence, Atty. Manuel, together with Atty. Almario and Atty. Espejo, senior and junior associates, respectively, at the Lazaro Law Office, agreed to meet Strong at the Taguig Detention Center of the Bureau of Immigration.<sup>[5]</sup>

During the meeting, Atty. Manuel explained to Strong the terms of the Lazaro Law Office's engagement as well as the fees. Strong assured him of his capacity to pay and offered to pay a success fee of US\$100,000.00 should the said law office be able to expedite his release from detention as well as his departure from the Philippines.<sup>[6]</sup> Finding Strong to be believable and trustworthy, Atty. Manuel agreed to handle his case.<sup>[7]</sup>

During the course of their meeting, Strong casually mentioned that he has a property in Boracay and that he suspected his neighbors as the persons who caused his arrest. According to Strong, his live-in partner Rodica filed a Complaint before the Regional Trial Court (RTC) of Kalibo, Aklan, for recovery of possession and damages<sup>[8]</sup> (against Hillview Marketing Corporation<sup>[9]</sup> (Hillview), Stephanie Dornau (Dornau) as President of Hillview, the Alargo Park Neighborhood Association, Inc. and spouses Robert and Judy Gregoire) in connection with the 353-square meter property they bought in Boracay. He disclosed that he and Rodica had been trying to sell the Boracay property to rid themselves of the problems but could not find buyers because of the said case. They even offered the property to Apostol but the latter was hesitant because of the said pending case. Atty. Manuel averred that towards the end of the interview with Strong, Rodica arrived. Strong described Rodica as his "handyman" who will act as his liaison in the case.

Upon inquiry with the Bureau of Immigration, it was discovered that Strong's arrest was made pursuant to an Interpol Red Notice; and that Strong is wanted in Brazil for Conspiracy to Commit Fraud, Setting Up a Gang and Other Related Crimes. Specifically, Strong is being indicted for his alleged involvement in "an international gang involved in shares fraud which led to the creation of hundreds of millions of dollars in illegal securities."<sup>[10]</sup> Strong denied any participation in the alleged crime. Strong then pleaded with Atty. Manuel to expedite his deportation to any country except Brazil and reiterated his willingness to pay the success fee of US\$100,000.00.

In her Complaint, Rodica alleged that in one of her meetings with the lawyers of the Lazaro Law Office, she hinted that Atty. Tan, a senior partner at the Marcos Ochoa Serapio Tan and Associates (MOST Law) and who is also the lawyer of Hillview and Dornau, was instrumental in the immigration case of Strong. According to Rodica, Atty. Manuel called up Atty. Tan. Thereafter, Atty. Manuel allegedly informed Rodica that Atty. Tan admitted having initiated the immigration case resulting in the detention of Strong; that Atty. Tan threatened to do something bad against Rodica and her family; and that Atty. Tan demanded for Rodica to withdraw the RTC case as part of a settlement package.

On May 25, 2011, the Bureau of Immigration, rendered its Judgment<sup>[11]</sup> granting the motion of Strong to voluntarily leave the country. On May 31, 2011, Strong left the Philippines. Subsequently, or on June 6, 2011, Rodica filed with the RTC a motion effectively withdrawing her complaint.

Rodica alleged that after the deportation of Strong and the withdrawal of the RTC case, she heard nothing from the Lazaro Law Office. She also claimed that contrary to her expectations, there was no "simultaneous over-all settlement of [her] grievances x x x [with] the defendants [in the RTC] case."<sup>[12]</sup> Thinking that she was deceived, Rodica filed the instant administrative case. In sum, she claimed that:

21. RESPONDENT ATTORNEYS (MANUEL, MICHELLE, EDWIN and ABEL) of M.M. LAZARO & ASSOCIATES, furthermore, committed GRAVE MISCONDUCT & DECEIT to complainant and the courts when (among other things):

- (a.) they mis-represented to complainant that the withdrawal of her case at the Regional Trial Court at Kalibo (Branch VI-Civil Case No. 8987) was only the first step in an over-all settlement package of all her differences with her legal adversaries (i.e. Hillview Marketing Corporation and the latter's officials / Stephanie Dornau / Atty. Joseph Tan etc.), which respondent Manuel M. Lazaro had allegedly already taken care of ;
- (b.) they extorted from her more than P7 MILLION for alleged professional / legal fees and PENALTIES involved in William Strong's immigration case, when what actually happened was -
- (c.) as complainant came to know later, almost all of said amount was allegedly used as "pay-off" to immigration, police and Malacañang officials as well as Atty. Joseph Tan, and as 'graft money' / 'kotong' / 'lagay' / "tong-pats", for the expeditious approval of Mr. William Strong's voluntary deportation plea with the Bureau of Immigration ;
- (d.) they even shamelessly denied the status of the complainant as their client, just so that they can evade their responsibility to her ;
- (e.) they even submitted concocted stories (re Mr. Apostol's purchase bid for the Boracay villa of complainant; Atty. Espejo's attempt to cover-up for Lolong Lazaro and accept sole responsibility for signing the questioned manifestation and withdrawal documents last May 24, 2011, and many others) with the Regional Trial Court of Kalibo (Branch VI) just so that they can hide the truth, hide their crimes and go scot free ;

22. RESPONDENT Atty. JOSEPH C. TAN on the other hand performed as a willing partner of ATTY. MANUEL M. LAZARO by acting as 'conduit' to his Malacañang patron ("JOHN DOE") in causing the arrest of William Strong last May 5, 2011, and in packaging with Lolong Lazaro of the 'magic formula' regarding William Strong's voluntary deportation bid and the conditions attached thereto as sufficiently explained ; x x x x

23. RESPONDENTS also violated THEIR OATH AS x x x ATTORNEYS, especially with the phrases ". . . I will obey the laws . . . I will do no falsehood, nor consent to the doing of any in court ; . . . I will delay no man for money or malice . . . with all good fidelity as well to the courts as to my clients . . . " ;<sup>[13]</sup>

Otherwise stated, Rodica claimed that she is a client of the Lazaro Law Office and that she was deceived into causing the withdrawal of the RTC case. Further, she claimed that the Lazaro Law Office collected exorbitant fees from her.

In their Comment, Atty. Almario and Atty. Espejo admitted being present in the May

13, 2011 meeting with Rodica. They denied, however, that Atty. Manuel talked with Atty. Tan during the said meeting, or conveyed the information that Atty. Tan and the group of Dornau were the ones behind Strong's arrest and detention.

Atty. Almario and Atty. Espejo disputed Rodica's assertion that the withdrawal of the RTC case was a condition *sine qua non* to Strong's departure from the country. They pointed out that the Manifestation with Motion to Withdraw Motion for Reconsideration<sup>[14]</sup> was filed only on June 3, 2011,<sup>[15]</sup> or nine days after the May 25, 2011 Judgment of the Bureau of Immigration was issued, and three days after Strong left the country on May 31, 2011. They insisted that Rodica withdrew the RTC case because it was one of the conditions set by Apostol before buying the Boracay property.

As to the preparation of Rodica's Motion to Withdraw Motion for Reconsideration relative to the RTC case, Atty. Espejo claimed that the former begged him to prepare the said motion. Since the two already became close friends, Atty. Espejo accommodated Rodica's request. He admitted to acceding to Rodica's requests to put the name of the Lazaro Law Office, the names of its partners, as well as his name, in the motion and into signing the same, without the prior knowledge and consent of the other senior lawyers of the firm. Atty. Espejo claimed that he did all of these out of his good intention to help and assist Rodica in making the Boracay property more saleable by freeing it from any pending claims.

In his Comment,<sup>[16]</sup> Atty. Manuel contended that none of the lawyers of the Lazaro Law Office communicated with Atty. Tan relative to the deportation proceedings or the RTC case. He claimed that it was highly improbable for the Lazaro Law Office to impress upon Rodica that it will coordinate with Atty. Tan for the withdrawal of the RTC case to expedite the deportation proceedings as the RTC case was already dismissed as early as March 29, 2011 for failure to state a cause of action. Atty. Manuel averred that the two cases are incongruous with each other and one cannot be used to compromise the other.

### **Atty. Joseph Tan's Arguments**

For his part, Atty. Tan asserted that the allegations against him are "double hearsay" because the same were based on information allegedly relayed to Rodica by Atty. Manuel, who, in turn, allegedly heard it from Atty. Tan.<sup>[17]</sup> He denied any participation in the withdrawal of the RTC case and the arrest and deportation of Strong.

Atty. Tan stressed that Strong was deported on May 31, 2011. Three days thereafter, or on June 3, 2011, Rodica, with the assistance of her counsel of record, Atty. Joan I. Tabanar-Ibutnande (Atty. Ibutnande), filed the Manifestation with Motion to Withdraw Motion for Reconsideration. He averred that if it is indeed true, as Rodica alleged, that the filing of the said motion was a pre-condition to Strong's voluntary deportation, then the filing of the same should have preceded Strong's deportation. However, it was the reverse in this case.

Atty. Tan also pointed out that it would be inconceivable for him to participate in Strong's arrest as he had already obtained a favorable ruling "on the merits" for his clients in the RTC case even before Strong was arrested and incarcerated. Besides,

Strong is not a party and had nothing to do with the RTC case. Atty. Tan likewise denied having any dealings with the rest of the respondents insofar as the arrest and voluntary deportation of Strong are concerned. Neither did he receive any phone call or message from his correspondents nor did he communicate with them in any manner regarding Strong's case.

### **Issue**

The sole issue to be resolved is whether the allegations in Rodica's Complaint merit the disbarment or suspension of respondents.

### **Our Ruling**

In *Siao v. Atty. De Guzman, Jr.*,<sup>[18]</sup> this Court reiterated its oft repeated ruling that in suspension or disbarment proceedings, lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove her allegations by preponderant evidence. Elaborating on the required quantum of proof, this Court declared thus:

Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number. (Citations omitted.)

In the absence of preponderant evidence, the presumption of innocence of the lawyer continues and the complaint against him must be dismissed.<sup>[19]</sup>

In the present case, the totality of evidence presented by Rodica failed to overcome the said presumption of innocence.

*Rodica's claim of "settlement package" is devoid of merit.*

Rodica's assertions that Atty. Tan orchestrated Strong's arrest and that Atty. Manuel proposed the withdrawal of the RTC case to facilitate the deportation of Strong, are mere allegations without proof and belied by the records of the case. "The basic rule is that mere allegation is not evidence, and is not equivalent to proof."<sup>[20]</sup> Aside from her bare assertions, Rodica failed to present even an iota of evidence to prove her allegations. In fact, the records belie her claims. The documents issued by the Bureau of Immigration showed that Strong was the subject of the Interpol Red