

THIRD DIVISION

[A.C. No. 6943, March 13, 2009]

**ATTY. GODOFREDO C. MANIPUD, COMPLAINANT, VS. ATTY.
FELICIANO M. BAUTISTA,**

DECISION

YNARES-SANTIAGO, J.:

On November 21, 2005, Atty. Godofredo C. Manipud filed a complaint for disbarment against Atty. Feliciano M. Bautista for alleged commission of forum shopping in violation of his attorney's oath and in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility, and for improper conduct.

Complainant narrated that he was a mortgagee of the property allegedly owned by Jovita de Macasieb. When the mortgagor failed to pay despite demands, he filed an application for extra-judicial foreclosure of the said property with the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court in Dagupan City. Thereafter, a Notice of Extrajudicial Sale was issued and the public auction was scheduled on April 1, 2005.

However, on March 22, 2005, Atty. Bautista, as counsel for the mortgagor, filed with the Regional Trial Court a verified complaint for "*Annulment of Real Estate Mortgage and Notice of Extrajudicial Sale with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order with Damages*" which was docketed as Civil Case No. 2005-0107-D. The case was raffled to Branch 41 which issued a TRO. On May 18, 2005, the trial court issued an order denying the prayer for issuance of preliminary injunction.

Thus, upon application of complainant-mortgagee, the sheriff caused another Notice of Extrajudicial Sale. The public auction was scheduled on July 29, 2005. However, on July 20, 2005, Atty. Bautista filed another case for annulment of real estate mortgage which was docketed as Civil Case No. 2005-0253-D.

According to complainant, the two complaints for annulment of real estate mortgage filed by respondent contained the same allegations, involved the same parties, the same subject matter, the same facts, the same issues and sought the same relief. Complainant argued that the act of respondent of filing the two complaints constitutes a clear case of forum shopping, an improper conduct which tends to degrade the administration of justice, and a violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility which commands all lawyers to uphold at all times the dignity and integrity of the legal profession.

Complainant also alleged that when his counsel filed a Motion to Dismiss the second complaint on the ground of forum shopping, respondent promptly filed a Motion to Withdraw Complaint.

In his Comment, Atty. Bautista alleged that the filing of the second complaint for annulment of the extrajudicial sale was a desperate attempt on his part to restrain the sale of his client's property; that he is not guilty of forum shopping because he did not act willfully, maliciously and with ill-intent; that he disclosed in the Certificate of Non-Forum Shopping of the second complaint the pendency of the first complaint, as well as in paragraphs 18, 20 and 22 of the said second complaint; that he filed the second complaint out of pity for his client who was about to lose her family home due to the unconscionably high monthly interest being charged by complainant; and that his prompt filing of a motion to withdraw the second complaint was indicative of his good faith.

On January 29, 2007, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. The IBP then directed the parties to attend a mandatory conference during which the admissions, stipulation of facts and definition of issues, shall be taken up. After the mandatory conference, the parties were heard and thereafter directed to submit their respective position papers.

In his Position Paper, complainant alleged that herein respondent, Atty. Bautista, is a nephew of Jovita de Macasieb, the registered owner of the mortgaged property. Although the loans which were obtained in 2003 appeared to have been received by Jovita de Macasieb, complainant learned, particularly on October 3, 2006, that Jovita de Macasieb has been dead since October 16, 1968.

Complainant alleged that respondent collaborated with an impostor in filing the two complaints for annulment of extra-judicial sale. Although the plaintiff in said complaints was referred to as JOVITA DE MACASIEB, the complaints however were signed by one JOVITA MACASIEB. Complainant argued that respondent intentionally resorted to this ploy in order to mislead the former. Since respondent was the one who notarized both complaints hence, he should know that JOVITA DE MACASIEB who was his aunt, and JOVITA MACASIEB who signed both complaints, are two different persons. Complainant averred that respondent's act of resurrecting a dead person not once but twice for the purpose of unjustly enriching themselves demonstrates a character not befitting a member of the legal profession.

In his Reply to complainant's Position Paper, respondent alleged that the only issue for resolution before the IBP is whether he violated the rule on forum shopping; that assuming the IBP could validly take cognizance of other issues, still it was complainant's fault that he transacted with an impostor; and that he did not know the person of Jovita Macasieb until the latter hired his services as lawyer.

In the Report and Recommendation of Investigating Commissioner Atty. Lolita A. Quisumbing, she found that respondent is not administratively liable for lack of showing that the filing of the second complaint was done deliberately and willfully to commit forum shopping. Thus:

To merit disciplinary action, forum shopping must be willful and deliberate. Section 5, Rule 7 of the Rules of Court requires that, should there be any pending action or claim before any court, tribunal or quasi-judicial agency, a complete statement of its status should be given.

In the present case, respondent explained his actions in this wise:

In the second complaint the respondent called the attention of the Court that there was a pending (sic) between the parties, Civil Case No. 2005-178. Hence, the purpose is not to obtain favorable decision, but to have the issue resolved in Civil Case No. 2005-178. To bring home his point, the respondent attached as Annex "E" the first complaint.

The respondent should not be blamed for the institution of the second complaint. He was misled by the very act of the complainant. Complainant had filed the application for foreclosure on December 20, 2004. This was the subject of Civil Case No. 178. All that he had to do was request the sheriff with whom he had filed the application to proceed with the foreclosure. There is absolutely no need for complainant to make a second application. In making the second application, it was impressed upon the mind of the respondent that it was another foreclosure.

In sum, respondent acted in good faith in filing the second complaint since it was established that it was his immediate reaction upon finding out that a second application for extrajudicial foreclosure was filed. If, indeed, there was intent to commit forum-shopping, he would not have alleged in the second complaint the fact of filing of the first complaint and attached a copy of the same.

The objective of the rule against forum-shopping was cited in *Municipality of Taguig, et al vs. Court of Appeals*. Said the Supreme Court -

What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issues.

In this case, no undue vexation was caused to the Court and petitioner as the fact of filing of the first case was alleged in the second complaint and secondly, soon thereafter, inasmuch as both cases were raffled to the same branch, the first case was dismissed by the said Court. Hence, there was no danger of different courts ruling on the same issues.

IN VIEW OF THE FOREGOING, it is respectfully recommended that the Complaint against respondent ATTY. FELICIANO C. BAUTISTA be dismissed for lack of merit. (Citations omitted)

The Board of Governors of the IBP adopted and approved the findings and recommendation of the Investigating Commissioner in a Resolution dated February 6, 2008.