486 Phil. 8

SECOND DIVISION

[A.C. No. 5454, November 23, 2004]

CARMELINA Y. RANGWANI, COMPLAINANT, VS. ATTY. RAMON S. DIÑO, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is an administrative complaint filed against Atty. Ramon S. Diño by Carmelina Y. Rangwani before this Court. In her complaint, Rangwani alleged that sometime in the years 1995 to 1996, Atty. Diño befriended her. Owing to his status in the community as a good lawyer and businessman, respondent was able to convince the complainant to part with her title to a parcel of land located in Dasmariñas, Cavite, under Transfer Certificate of Title (TCT) No. 2791-97, Entry 5320-102. After the lapse of five months, complainant demanded the return of her title from respondent who promised to return the same but failed to do so. After ten months, respondent was nowhere to be found. Complainant, with the help of an informer, was able to locate respondent who turned out to have transferred his residence to Makati City. Upon confrontation, respondent retorted that he could not give back the title to the land. Instead, he offered to buy the property. Thus, he issued the following checks[1] to complainant:

Check No.	Date	Amount
0062631	May 15, 1999	P50,000.00
0062632	June 15, 1999	50,000.00
0062633	July 15, 1999	50,000.00
0062634	July 30, 1999	52,570.00

When deposited, all the checks bounced for the reason "closed account."

In the year 1999, complainant filed Criminal Cases No. 55666, No. 57029, No. 276070, and No. 279784 for violation of Batas Pambansa (B.P.) Blg. 22 against the respondent. Warrants for the arrest of respondent in relation to these cases were issued.[2]

On 29 August 2001, this Court, acting on the Complaint, issued a resolution requiring the respondent to comment thereon on the complaint.[3] On 22 November 2001, respondent filed an Omnibus Motion for Leave of Court to Admit Comment and for a Formal Hearing. In this motion, he bared that the Court's resolution requiring him to comment was sent to his parents' residence. He claimed he has been living for the past two years in a rented house at Signal Village, Taguig, Metro Manila, and has been in the province for the last three weeks attending to business concerns. He said he was not aware that a disbarment complaint has been filed against him. While he admitted that there were cases previously filed by complainant against him, said cases had already been withdrawn and the

corresponding desistance, waiver and quitclaim had been signed by her and that complainant had in fact "received (already) the monetary claims or their equivalent involving said cases."[4] Respondent was, therefore, under the belief that all those cases had been dismissed. Hence, he said, he was unaware that warrants for his arrest were issued. He had been a lawyer for the past twenty-three years and this is the first and only case filed against him before the Court and in the Integrated Bar of the Philippines (IBP). He was a working student who took various jobs at the early age of seventeen. He took the 1977 bar exams and landed No. 13 with an average of 88.88%. He said his title as a lawyer and his license to practice are the only legacies he can leave to his children; hence, he prays that he be given the chance to be heard formally to be able to air his side.

On 16 January 2002, complainant filed her counter-affidavit[5] disputing her alleged withdrawal of this complaint and the denial by the respondent of the standing warrants of arrest against him arising out of the incident in question. The same was referred to the IBP.

In a resolution dated 28 January 2002,[6] this Court resolved to grant respondent's Omnibus Motion for Leave of Court to Admit Comment on the administrative complaint and for a Formal Hearing, and noted the comment therein. The case was referred to the IBP for investigation, report and recommendation within ninety days from notice.

On 02 May 2002, complainant submitted a letter[7] to the IBP withdrawing the complaint she filed against respondent, stating that "after much reflection and recall of the antecedent facts that led to the filing of the complaint, I have finally decided to withdraw the same as it arose purely out of misunderstanding and miscommunication and definitely not warranting any disciplinary action much less disbarment and apologize for whatever inconvenience the complaint had cause[d] the office."

In an Order dated 19 June 2002, Commissioner Rebecca Villanueva-Maala of the IBP, Commission on Bar Discipline (CBD), to whom the case was assigned for investigation, report and recommendation, notified the parties to appear for a hearing at said office on 03 July 2002.

Per order dated 03 July 2002 of Commissioner Maala, it appears that when the case was called for hearing, neither complainant nor respondent appeared. It was not shown, however, whether they received notices of the scheduled hearing, hence, the same was ordered cancelled and reset to 17 July 2002.

In a resolution dated 05 August 2002, this Court acting on the letter of complainant dated 02 May 2002, resolved to note the same and referred it to the IBP.

On 07 October 2002, complainant submitted to the IBP a motion to hold and to quash withdrawal of the administrative case expressing a desire to actively pursue her complaint.

According to complainant, respondent begged her to dismiss the administrative complaint she filed and promised to settle his obligations with her. It was only for this reason that she agreed to sign a written withdrawal of her complaint. This was,

however, a mere promise which remained unfulfilled.[8]

Not very long after, on 25 October 2002, complainant again filed before the IBP a Motion to Dismiss Complaint. As is usual in desistance, complainant manifested her interest to have the complaint dismissed after what she said was a mature reflection, realizing that respondent had served her faithfully, honorably and well in the various cases that he had handled for her at a time when she needed it most. She articulated that the cases she had filed against the respondent have long been settled between them and should have been dismissed by the Court, but she was not aware that respondent's presence is necessary for the dismissal of those cases, and she could not locate respondent. She only discovered later on that he was actually taken very ill due to hypertension and gastro-intestinal problems. On the other hand, respondent, in an effort to exculpate himself, averred he was under the impression that complainant would take care and see to the dismissal of the said cases against him. To convince the IBP that the case should be dismissed, complainant likewise claimed that respondent had no more obligation to her because the same had been offset by legal services rendered by the latter after an accounting was taken.[9]

In an Order dated 05 November 2002, issued by IBP Commissioner Rebecca Villanueva-Maala, the parties were notified to attend a hearing on the case which was set on 04 December 2002.[10] This scheduled hearing was, however, reset to 12 December 2002 for failure of the complainant to appear on the earlier date.[11] At the hearing set on 12 December 2002, both parties appeared but complainant moved to reset on 29 January 2003 without objection from the respondent.[12]

On 31 January 2003, the IBP, in Compliance[13] with this Court's resolution dated 20 November 2002[14] directing it to submit a status report on the case every first day of the month until termination of the investigation, stated that because of complainant's failure to appear and affirm her Affidavit of Desistance despite several hearings set by the Commission, it now considered the cases submitted for report and recommendation and to be decided on the merits thereof.

Per report of Commissioner Rebecca Villanueva-Maala, respondent Atty. Ramon S. Diño was found to have committed gross misconduct, and he was, thus, recommended to be suspended for a period of one year from the practice of his profession as a lawyer and member of the bar. This was reduced to six months by the IBP Board of Governors in a resolution dated 21 June 2003, which reads:

> **RESOLUTION NO. XV-2003-343**
> **Adm. Case No. 5454**
> **Carmelina Y. Rangwani vs.**
> **Atty. Ramon S. Diño**
>
> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, **with modification** as to penalty to conform to the evidence, and considering that respondent's issuance of checks in violation of the

> provisions of B.P. 22 constitutes serious misconduct and in addition respondent committed gross misconduct when he failed to comply his promise to complainant to settle the case, Atty. Ramon S. Diño is hereby **SUSPENDED** from the practice of law for six (6) months.

We agree with the IBP's finding of guilt as the same is fully anchored on the evidence on record and on applicable laws, rules and jurisprudence.

Quite conspicuously, despite the opportunities accorded to respondent to refute the charges against him, he failed to do so or even offer a valid explanation. The record is bereft of any evidence to show that respondent has presented any countervailing evidence to meet the charges against him. His nonchalance does not speak well of him as it reflects his utter lack of respect towards the public officers who were assigned to investigate the cases.[15] On the contrary, respondent's comments only markedly admitted complainant's accusations.[16] When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him. He must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.[17] These, the respondent miserably failed to do.

Respondent relies, quite heavily, on the complainant's move to dismiss the complaint, to secure exoneration. His reliance is misplaced. Firstly, because the same has not been confirmed and substantiated by the complainant at all as she failed to appear in the hearings scheduled for the purpose despite due notice. Secondly, and most importantly, we have consistently looked with disfavor upon such desistance of complainants because of legal and jurisprudential injunction.

Section 5, Rule 139-B of the Rules of Court provides:

> Sec. 5. *Service or dismissal*. – . . . .
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> . . .
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> No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

In *Bais v. Tugaoen*,[18] the Court frowned upon the complainant's affidavit of desistance, hence, in spite of it, proceeded with the complaint against the erring judge.

In *Reyes-Domingo v. Morales*,[19] we expostulated that:

> The withdrawal of a complaint for lack of interest of a complainant does not necessarily warrant the dismissal of an administrative complaint (Dagsa-an v. Conag, 290 SCRA 12 [1998]). The Court cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision (Zamora v. Jumamoy, 238 SCRA 587 [1994]). The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be

made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses (Sy v. Academia, 198 SCRA 705 [1991]).

The later case of Executive Judge Pacifico S. Bulado v. Domingo Tiu, Jr. (A.M. No. P-96-1211, 31 March 2000, pp. 4-5, 329 SCRA 308), more pointedly stated that –

While complainant in this case may have forgiven respondent, this Court, charged as it is with enforcing discipline in the judiciary, cannot simply close its eyes to respondent's acts of extreme intransigence. Withdrawal of the complaint will not free respondent from his administrative liability (Estreller v. Manatad, Jr., 268 SCRA 608 [1997]), particularly because administrative proceedings are imbued with public interest, public office being a public trust (Gacho v. Fuentes, Jr., 291 SCRA 474 [1998]).

The need to maintain the faith and confidence of the people in the government, its agencies and its instrumentalities requires that proceedings in administrative cases should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein (Estreller v. Manatad, *supra*; Gacho v. Fuentes, *supra*). The court cannot be bound by the unilateral act of a complainant in a matter that involves its disciplinary authority over all employees of the judiciary; otherwise, our disciplinary power may be put to naught (Sandoval v. Manalo, 260 SCRA 611 [1996]).

Finally, in *Bolivar v. Simbol*,[20] the Court, citing *In re Davies*,[21] ruled that the discipline of lawyers cannot be cut short by a compromise or withdrawal of charges:

It is contended on the part of the plaintiff in error that this settlement operated as an absolution and remission of his offense. This view of the case ignores the fact that the exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession. He had acted in clear disregard of his duty as an attorney at the bar, and without "good fidelity" to his client. The public had rights which Mrs. Curtis could not thus settle or destroy. The unworthy act had been fully consummated.

Respondent's act of having borrowed the title to the land of complainant, his presumed use of the said title for his personal gain, his failure to return the same despite repeated demands and worse, his issuance of three checks in exchange for the said land title which bounced, constitute gross misconduct for which he must be disciplined. In this connection Rule 16.04 of the Code of Professional Responsibility is unequivocal. It states:

Rule 16.04 – A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.[22]

In the case of *Judge Adoracion G. Angeles v. Atty. Thomas Uy, Jr.*,[23] this Court held: