

EN BANC

[A.C. No. 12689 (Formerly CBD Case No. 14-4459), September 01, 2020]

**VDA. ELEANOR V. FRANCISCO, COMPLAINANT, VS. ATTY.
LEONARDO M. REAL, RESPONDENT,**

DECISION

PER CURIAM:

This is an administrative complaint^[1] against respondent Atty. Leonardo M. Real for violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility (CPR) for non-payment of just debts and issuing worthless checks.

The Case

Complainant Eleanor V. Francisco (complainant) is the owner of a property located in Carigma St. corner Burgos St., Brgy. San Jose, Antipolo City. In February 2012, complainant and respondent entered into a contract of lease over one of the rooms at the second floor of the property as lessor and lessee, respectively. The term of the lease was from February 1, 2012 to January 31, 2013 with a monthly rental in the amount of P6,500.00.^[2]

Complainant alleged that as payments for the months of October to December 2012, respondent, using his wife's checks, issued three (3) checks in the amount of P6,500.00 each in favor of complainant. However, these checks were dishonored upon presentment for the reason "account closed."^[3]

On May 21, 2013, complainant sent respondent a demand letter, but the same was ignored. She thereafter filed a complaint before the Barangay Lupon of San Jose, Antipolo City, but she and respondent failed to reach a settlement and so a certificate to file an action was issued in favor of complainant.^[4] On August 1, 2013, complainant sent another demand letter to respondent, but it also remained unheeded. Thus, on September 10, 2013, complainant filed a small claims action for sum of money before the Municipal Trial Court in Cities (MTCC) of Antipolo City against respondent and his wife.^[5]

Respondent and his wife did not participate in the proceedings before the MTCC. Thus, upon motion of complainant, the case was submitted for decision.^[6] In its October 22, 2013 Decision,^[7] the MTCC ruled in favor of complainant and ordered respondent and his wife to pay the unpaid rentals from October 2012 to November 2013 in the total amount of P91,000.00.^[8]

On December 17, 2013, the MTCC issued a writ of execution and a notice to vacate was sent to respondent. However, complainant alleged that until the filing of her

administrative complaint on December 15, 2014, or one year after the issuance of the writ of execution, respondent continued to occupy the property.^[9]

Complainant averred that she was perplexed about the conduct of respondent in consistently giving her false hopes, which, in her opinion, ran contrary to the ideals of his legal profession. She said she only understood it all after she learned about the prior suspension of respondent from the practice of law and the revocation of his notarial commission.^[10]

In his Answer,^[11] respondent explained that he held office in the subject property, but due to his financial distress by reason of his one (1)-year suspension from the practice of law and revocation of his notarial commission, he was forced to close his office and leave the premises. He countered that the rentals from February 2012 to November 2012 were duly paid through the checks his wife issued on his behalf. He denied ever receiving any demand letter from complainant or being summoned for conciliation before a barangay.^[12]

Respondent acknowledged the decision of the MTCC of Antipolo City in the small claims action filed against him by complainant, but denied that he ignored the writ of execution and the notice to vacate. He maintained that he had long vacated the property even before complainant asked for his ejectment. Respondent also maintained that even before complainant filed the case, he offered to pay his arrears in installment, but complainant allegedly refused because she wanted to be paid in full instead. Respondent recounted that, in fact, during the execution stage of the decision of the MTCC, he instructed his secretary, who was accompanied by the sheriff, to tender the amount of P20,000.00 as part of payment to complainant in her office. Complainant, however, allegedly refused to accept such partial payment.^[13]

Respondent expressed that he is very much willing to pay his debts, albeit in installment as he has yet to regain a vibrant practice after his suspension from the practice of his legal profession.^[14]

The IBP Findings

In its Report and Recommendation,^[15] the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) found that respondent has not learned from his previous suspension by the Court. Since he was aware that he cannot meet his obligation to pay his lease, the most prudent thing respondent could have done was to immediately vacate the premises. He only did so, however, after the MTCC issued a writ of execution. In short, respondent continued to occupy the property without paying rentals for almost a year.^[16]

The IBP-CBD also held that although the checks were drawn against the account of his wife, it was as if respondent himself issued them. The checks were issued in favor of complainant to cover the payment of respondent's lease obligation. It can safely be assumed therefore that respondent knew that the checking account of his wife was already closed.^[17]

Thus, the IBP-CBD recommended that respondent be suspended from the practice

of law for six (6) months and that, as mandated in the decision of the MTCC, respondent be ordered to pay his financial obligations to complainant in the amount of P91,000.00 with legal interest from May 21, 2013, the date of the formal demand.^[18]

The IBP-Board of Governors (IBP-BOG) adopted the findings of the IBP-CBD, but modified its recommended penalty from a six (6)-month suspension to disbarment. The IBP-BOG ruled in this wise in view of respondent's failure to pay rentals of his law office despite demand; his continuously occupying the premises without paying rentals even after complainant filed a case with the MTCC of Antipolo City for almost one year; his having vacated the premises only after the MTCC issued a writ of execution; his issuance of three (3) worthless checks as payment of rentals under the name of his wife; and his being a habitual violator of the CPR.^[19]

Respondent filed a motion for reconsideration^[20] of the Resolution of the IBP-BOG, lamenting that the penalty imposed was too harsh. He recounted that he had no original intention to rent the place, and that it was complainant's friends who initiated the lease, suggesting that a part thereof would be rented out for medical purposes and a part would be rented out as respondent's notarial office. Respondent claimed that complainant's friends later changed their minds.^[21]

Respondent also maintained that he had no intention to deceive complainant, pointing out that it was she who drafted the lease contract and who proposed that post-dated checks be issued to cover the monthly rentals. Respondent likewise emphasized that there were nine (9) post-dated checks in total and only three (3) of these were dishonored.^[22]

Moreover, respondent insisted that he had no intention to evade his obligation, reiterating that he approached complainant several times to offer paying the accrued rentals in installment, but she always refused and only wanted to be paid in full.^[23]

Complainant, in her Comment^[24] to the motion for reconsideration, countered that prior to her filing of the small claims action before the MTCC, she repeatedly reached out to respondent about his obligation, but to no avail. It was only after the writ of execution was issued by the MTCC that respondent wanted to settle in installment. Complainant argued that under the Rules of Court, there is no piecemeal payment in execution of judgments for money.^[25]

The IBP-BOG in its Resolution^[26] dated September 28, 2017 denied respondent's motion for reconsideration.

The Issue

Whether respondent should be administratively held liable for his failure to pay the monthly rentals due the complainant, for the dishonor of the checks issued in payment of these monthly rentals, and for his alleged obstinate refusal to vacate the premises.

The Court's Ruling

The Court adopts the findings and recommendation of the IBP-BOG with modification.

The fact that respondent incurred delay in the payment of his rental obligations with complainant is undisputed. Respondent does not deny this, but contends that he is willing to pay complainant in installment. Respondent has also explained that when he entered into the contract of lease with complainant from February 2012 to January 2013, they agreed that the monthly payment of P6,500.00 shall be drawn from the checking account of his wife. Respondent also does not deny that checks were dishonored, but raises it as a defense of his good faith that only three (3) out of the nine (9) checks issued were dishonored.

The way respondent downplays his offenses cannot be countenanced. His non-payment of just debts and his hand in the issuance of worthless checks constitute gross misconduct on respondent's part which deserve to be sanctioned.

Gross misconduct is defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment." In *Sosa v. Mendoza*,^[27] the Court ruled that failure to pay debts constitutes violation of Rule 1.01 of the CPR, because it is willful in character and implies a wrongful intent; it is not considered a mere error in judgment. Canon 1, Rule 1.01 of the CPR states:

CANON 1 — A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Similarly, Canon 7, Rule 7.03 of the CPR provides:

CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

x x x x

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

In this case, respondent began defaulting in his obligation in October 2012, when the post-dated check issued for that month was dishonored. The two remaining post-dated checks were likewise dishonored subsequently. Complainant sent demand letters to respondent and sought the help of the barangay for conciliation, but her attempts to get respondent to pay all proved futile. Respondent simply denied he received these notices. While he acknowledged the decision of the MTCC, it is nonetheless quite telling that he also did not participate in the proceedings before it despite notice. Verily; it cannot escape the attention of the Court that

several months had already passed from October 2012, when the first check was dishonored, after the first demand letter was sent to respondent in May 2013. It also took almost a year from October 2012 to September 2013, when complainant filed the small claims action against respondent. It is revealing of respondent's character that he let the months slip by without attending to his obligation, and belies his avowal that he had no intention to renege.

Thus, in light of the prolonged silence of respondent, the Court is inclined to believe the version of complainant that the alleged willingness of respondent to pay, albeit in piecemeal, was a belated attempt on his part to settle after the MTCC had already issued the writ of execution. As correctly pointed out by complainant, she had no obligation to accept the payment plan of respondent, considering his previous failure to pay promptly^[28] and the express provision under Section 9, Rule 39 of the Revised Rules of Court that the officer enforcing an execution of a judgment for money shall demand from the judgment obligor the immediate payment of the **full amount** stated in the writ of execution and all lawful fees.

Furthermore, a lawyer's act of issuing worthless checks, punishable under Batas Pambansa Blg. (BP) 22, constitutes serious misconduct.^[29] In *Ong v. Delos Santos*,^[30] the Court also held that a lawyer who issues a worthless check is in breach of his oath to obey the laws.^[31] The Court explained thus:

[BP 22] has been enacted in order to safeguard the interest of the banking system and the legitimate public checking account users. The gravamen of the offense defined and punished by [BP 22], according to *Lozano v. Martinez*, is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated. The Court has observed in *Lozano v. Martinez*:

The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest,
x x x^[32]

Here, the fact that the checks were drawn in the name of respondent's wife and not directly in his name is of no moment. As respondent himself has admitted, he stood as the lessee of the property subject of the lease contract and acknowledged that he and complainant had agreed that the postdated checks drawn in the name of his wife would be used in payment of the monthly rentals. Being a lawyer, respondent was well aware of, or was nonetheless presumed to know, the objectives and coverage of BP 22. Yet, he knowingly violated the law and thereby "exhibited his indifference towards the pernicious effect of his illegal act to public interest and