

## FIRST DIVISION

**[ A.C. No. 12622 (Formerly CBD Case No. 15-4651), February 10, 2020 ]**

**WILMA L. ZAMORA, COMPLAINANT, VS. ATTY. MAKILITO B. MAHINAY, RESPONDENT.**

### DECISION

#### CAGUIOA, J:

This instant administrative case arose from a verified Complaint<sup>[1]</sup> for disbarment filed by complainant Wilma L. Zamora (Zamora) against respondent Atty. Makilito B. Mahinay (Atty. Mahinay) before the Integrated Bar of the Philippines (IBP).

#### The Case

Zamora, representing the PJH Lending Corporation, is the plaintiff in an action for forcible entry entitled *PJH Lending Corporation v. Jurisa Lariosa Tumog, et al.* It was filed before the Metropolitan Trial Court (MeTC) of Mandaluyong City, and was raffled to Branch 59.<sup>[2]</sup>

The MeTC subsequently rendered a decision in favor of the PJH Lending Corporation.<sup>[3]</sup> The Regional Trial Court (RTC) of Mandaluyong City, Branch 212 likewise affirmed the MeTC decision on appeal, and the case was eventually remanded to the MeTC for proper disposition.<sup>[4]</sup>

PJH Lending Corporation filed a motion for execution<sup>[5]</sup> which the MeTC of Mandaluyong City, through Assisting Judge John Benedict Medina, granted.<sup>[6]</sup> Atty. Mahinay, on behalf of his clients, filed a motion for reconsideration,<sup>[7]</sup> where he pertinently alleged in part:

D. THE SUBJECT ORDER OF THIS HONORABLE COURT IF NOT RECONSIDERED WOULD VIOLATE CANON 3 OF THE CODE OF JUDICIAL CONDUCT[, ] MORE PARTICULARLY RULE 3.01 AND RULE 3.02.

14. Defendants honestly believe, that this Honorable Court is duty bound to consider the following facts: (a) That [the] decision in this case has been already rendered moot and academic[; ] (b) That plaintiff has expressly waived the decision in this case and has authorized this Honorable Court to release the supersedeas bond to herein defendants. (The said supersedeas bond means a lot to the defendants and their respective families)[; ] (c) The lack of authority of Atty. Lim to file the motion for issuance of writ of execution[; ] x x x (d) The laws and jurisprudence cited by herein defendants that plaintiff[, ] as a corporation, can only act through its board[; ] [and] (e) By provision of law, jurisprudence and specific provision of the Code of Judicial Conduct, this

Honorable Court [cannot] be partial to the party which Atty. Lim represents.

15. Under Rule 3.01 of the [Code] of Judicial Conduct, it is provided that: "A judge shall be faithful to the law and maintain professional competence." And under Rule 3.02, "In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law, x x x."

16. Defendants are furnishing a copy of this motion to the Court Administrator, as they reserve to upgrade their above perceived violation of the Code of Judicial Conduct to a formal administrative complaint.<sup>[8]</sup> (Emphasis deleted)

Alleging that in the above motion for reconsideration, Atty. Mahinay threatened the judge with an administrative complaint if he would not grant the motion, Zamora filed a Complaint for disbarment against Atty. Mahinay before the IBP for violation of Canon 11, Rule 11.03 of the Code of Professional Responsibility (CPR).<sup>[9]</sup>

Zamora alleged further that this was not the first time that Atty. Mahinay had threatened a judge with an administrative case if the motion he filed would not be resolved in his favor. She cited another case pending before the RTC of Cebu, Branch 23, where Atty. Mahinay also threatened Judge Generosa Labra with an administrative case if she would not resolve the motion for reconsideration in his client's favor. Zamora concluded that Atty. Mahinay has the propensity to threaten judges with administrative complaints should they rule against his clients. She advocated that a lawyer such as Atty. Mahinay does not deserve to stay any longer in the roll of attorneys and must, therefore, be disbarred immediately.<sup>[10]</sup>

In his Answer,<sup>[11]</sup> Atty. Mahinay essentially countered that the complaint of Zamora has no factual and legal basis. He pointed out that said complaint was the fifteenth administrative charge she filed against him at the instigation of her lawyer, Atty. Anthony Lim. Atty. Mahinay maintained that there was nothing disrespectful in the motion for reconsideration he filed before Judge Medina. He stood firm in what he said therein that Judge Medina was duty bound to consider the facts of the case. Atty. Mahinay believed it was his duty as an officer of the court to be forthright and candid to Judge Medina on what he perceived as deviations from the Code of Judicial Conduct.

Atty. Mahinay further argued that his act of furnishing the Court Administrator with a copy of his motion for reconsideration was not a violation of any law. It was merely preliminary to the subsequent filing of the formal administrative case which his client had, indeed, subsequently filed before this Court against Judge Medina.<sup>[12]</sup>

### **The IBP Proceedings**

After the mandatory conference and the submission of the parties' position papers, the Investigating Commissioner issued a Report and Recommendation<sup>[13]</sup> to dismiss the complaint against Atty. Mahinay. The Investigating Commissioner first noted that the alleged abusive remarks made by Atty. Mahinay against Judge Medina were coured through the pleading filed and solely intended for the court. He agreed it was well within Atty. Mahinay's duty to be forthright and candid to Judge Medina, and by doing so, Atty. Mahinay only expressed his perception of Judge Medina's deviation from the rules and the Code of Judicial Conduct.

The Investigating Commissioner also held that Zamora did not proffer any proof, such as sworn statements from vital witnesses or other documentary evidence, which would show that Atty. Mahinay really intended to threaten Judge Medina.<sup>[14]</sup>

The Board of Governors (Board) of the IBP, in Resolution No. XXII-2016-266<sup>[15]</sup> dated April 29, 2016, resolved to adopt the findings of fact and recommendation of the Investigating Commissioner dismissing the complaint.

Zamora thereafter filed a Motion for Reconsideration.<sup>[16]</sup> She disagreed with the conclusion of the Investigating Commissioner that there was no other proof that Atty. Mahinay really intended to threaten Judge Medina. Zamora pointed out that the threat was on the face of the subject motion for reconsideration itself, which she attached in her complaint. This was proof enough that Atty. Mahinay unreasonably threatened Judge Medina.

Zamora also enumerated other cases which purportedly showed an undeniable pattern of Atty. Mahinay's propensity to attack judges for leverage. She attached copies of pleadings where Atty. Mahinay similarly used disrespectful and threatening language to the judge handling his client's cases.<sup>[17]</sup>

In his Comment,<sup>[18]</sup> Atty. Mahinay argued that Zamora's Motion for Reconsideration did not deserve further consideration by the Board for being pro-forma. He emphasized that the subject pleading was already carefully considered by the Board and was found to be non-violative of Canon 11, Rule 11.03 of the CPR.

On January 27, 2017, the Board issued Resolution No. XXII-2017-814<sup>[19]</sup> granting the Motion for Reconsideration of Zamora. The Board took note of Atty. Mahinay's previous infraction and found Atty. Mahinay to have committed brazen threats to the courts as leverage. The Board further resolved to impose against Atty. Mahinay the penalty of suspension from the practice of law for six (6) months for violation of Canon 11, Rule 11.03 of the CPR.

In the Extended Resolution<sup>[20]</sup> penned by IBP Commission on Bar Discipline Director Ramon S. Esguerra for the Board, the Board found that while Atty. Mahinay claimed to defend his client's rights over the property subject of the ejectment case, he was clearly out of bounds when he hinted that Judge Medina was partial to Zamora. Worse, he threatened Judge Medina with an administrative case for alleged violations of the Code of Judicial Conduct should his (Atty. Mahinay's) motion for reconsideration be denied. This, to the mind of the Board, cannot be countenanced as his statements promoted distrust in the administration of justice.

Atty. Mahinay, in turn, filed a Manifestation and Motion for Reconsideration of Resolution No. XXII-2017-814.<sup>[21]</sup> He insisted that the Board should not have considered Zamora's Motion for Reconsideration because it did not contain new evidence which warranted the abandonment of the earlier Resolution of the Board dismissing the Complaint. He maintained that the statements in his motion for reconsideration filed before the sala of Judge Medina were backed up by solid evidence, specific provisions of law and jurisprudence, and made without malice but only in pursuance of his duties as a lawyer.

Atty. Mahinay also asserted that the Board should not have noted his alleged previous infraction as the same was not covered in the issues stipulated by the

parties. More importantly, according to Atty. Mahinay, this previous infraction cannot undo the earlier finding of the Board that his subject motion for reconsideration filed before Judge Medina complied with the exacting standards of ethics. The present charge, therefore, must have its own leg to stand on.<sup>[22]</sup>

On August 29, 2018, the Board issued a new Resolution<sup>[23]</sup> granting the Motion for Reconsideration of Atty. Mahinay and reinstating the earlier Report and Recommendation of the Investigating Commissioner to dismiss the Complaint. The Board ruled that Zamora did not present substantial evidence to prove that Atty. Mahinay had violated Canon 11, Rule 11.03 of the CPR. It held that while Atty. Mahinay may have been strong and passionate in expressing his views and legal arguments, there was nothing insulting or disrespectful in the language that he used in the subject motion for reconsideration.<sup>[24]</sup>

Aggrieved, Zamora filed the instant petition for review on *certiorari*.<sup>[25]</sup>

### **The Issue Before the Court**

The issues raised in the petition all boil down to the essential question of whether the IBP correctly dismissed the complaint against Atty. Mahinay.

### **Ruling of the Court**

The Court adopts the findings of the Investigating Commissioner and the recommendation of the IBP Board to reinstate the earlier Resolution dismissing the Complaint against Atty. Mahinay.

It is fundamental that the quantum of proof in administrative cases such as disbarment proceedings is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as **adequate** to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.<sup>[26]</sup> While Zamora is correct that the very pleading itself is the best piece of evidence to prove whether Atty. Mahinay had, indeed, violated Canon 11, Rule 11.03 of the CPR, the Court finds that this proffered evidence failed to reach the threshold of the quantum of proof required. The Court does not find the language used in the subject motion for reconsideration to be offensive, abusive, malicious, or intemperate in any way. It did not spill over the walls of decency or propriety.<sup>[27]</sup>

The pertinent portions of the subject motion for reconsideration merely enumerated the facts, which in the opinion of Atty. Mahinay and his clients, the trial court was duty bound to consider. The last of the enumeration may have contained the word "partial," to wit:

(e) By provision of law, jurisprudence and specific provision of the Code of Judicial Conduct, this Honorable Court [cannot] be partial to the party which Atty. Lim represents.<sup>[28]</sup>

A sober reading of the quoted portion, however, does not call to mind that Judge Medina is being labelled as partial. It neither insinuates so in any way. It would be far too a stretch to say that after enumerating all the points Judge Medina failed to consider, the above statement is a conclusion of his partiality. There is no other statement to bridge such a connection.