

## EN BANC

[ A.C. No. 7231, October 01, 2019 ]

**EDGAR M. RICO, COMPLAINANT, V. ATTYS. JOSE R. MADRAZO, JR., ANTONIO V.A. TAN AND LEONIDO C. DELANTE, RESPONDENTS.**

### DECISION

#### PERALTA, J.:

Before the Court is a Complaint for suspension or disbarment filed by herein complainant Edgar M. Rico against herein respondents Attys. Jose R. Madrazo, Jr. (*Madrazo*), Antonio V. A. Tan (*Tan*), and Leonido C. Delante (*Delante*) on grounds of fraud, conduct unbecoming a lawyer, and violation of the Notarial Law.

Complainant alleged in his Complaint<sup>[1]</sup> that: he is an "allocatee" of a certain parcel of land located in Tulip Drive, Matina, Davao, City; coconut trees are being grown in the said land; respondents, Madrazo and Tan, subsequently filed before the Philippine Coconut Authority (*PHILCOA*) an application for Permit to Cut these coconut trees; attached to Madrazo's and Tan's application are several Affidavits of No[n]-Encumbrance and Affidavits of Marking the Coconut Trees which they intend to cut; these affidavits were supposedly acknowledged by Madrazo and Tan before Delante; upon verification of the genuineness and validity of these affidavits, complainant found out that the document numbers and page numbers marked on these affidavits, as appearing on the Notarial Register of Delante, correspond to other documents, such as a deed of absolute sale, a secretary's certificate, and other affidavits executed by persons other than Madrazo and Tan. Complainant contends that respondents are guilty of fraud, deceit, malpractice and other gross misconduct in attaching invalid and spurious documents to their application for Permit to Cut coconut trees.

In his Answer,<sup>[2]</sup> respondent Delante denied the material allegations in the Complaint and claimed that: on the dates appearing in the Affidavits being disputed by complainant, both respondents Tan and Madrazo personally appeared before him and swore to the truth and veracity of the contents of their Affidavits; in fact, Madrazo holds office in the same building as he does; through inadvertence, Delante's office secretary failed to enter in his notarial register the details of the documents complained of; his secretary's omission was unintentional and done without malice; under settled jurisprudence, even the fact that the questioned documents did not appear in the notarial register, did not make said documents spurious, fake, and non-existent, because the notarial register is not always the memorial of all the daily transactions of a notary public.

In his Comment,<sup>[3]</sup> respondent Madrazo also denied the material allegations in the Complaint and alleged that: the lot being referred to by complainant forms part of a much larger tract of land comprised of more than 127 hectares which was originally covered by Original Certificate of Title No. 5609 in the name of Francisco Villa Abrille

Juna (Francisco); the subject property was, subsequently, inherited by a certain Milagros Villa Abrille (*Milagros*) who is one of the many heirs of Francisco; on August 12, 1999, complainant leased the subject property from Milagros for a period of two years; for complainant's subsequent failure to pay rentals, Milagros, with herein respondent Madrazo acting as her counsel, filed before the Municipal Trial Court in Cities (*MTCC*) of Davao City an ejectment case against complainant; in his defense, complainant questioned the ownership of Milagros over the subject property contending that her title thereto is spurious; the MTCC as well as the RTC and the CA, and eventually, this Court all ruled in favor of Milagros; the present Complaint is a mere retaliatory move on the part of the complainant who was ordered ejected from the subject property by reason of the final and executory Decision of this Court; complainant, subsequently, filed a Free Patent Application over the disputed lot and even connived with several persons to deprive Milagros and other members of the Villa Abrille family their rightful possession of their properties. As to the alleged falsification of documents presented by respondents to the PHILCOA, Madrazo claims that before granting the permits applied for by respondents, the PHILCOA inspected the premises of the property subject of the application. Madrazo also claims that he personally appeared before respondent Delante to acknowledge the documents he executed and that he had no knowledge nor participation in the alleged failure to record the said documents in Delante's notarial register.

On his part, respondent Tan, in his Comment,<sup>[4]</sup> likewise, denied the material allegations in the Complaint and averred that: his grandfather, Carlos Villa Abrille (*Carlos*), was one of the heirs of Francisco; upon the death of Carlos, Tan was appointed as the judicial administrator of the intestate estate of Carlos; among the properties comprising this estate, is the subject lot which is being claimed by herein complainant; complainant is illegally occupying the said property and that he had been falsifying documents to make it appear that the disputed property is still public, alienable and disposable land; a criminal case for falsification had been filed against complainant where he was convicted by the trial court and his appeal is pending before the Court of Appeals; Tan adopts the Comment of co-respondent Madrazo as his own; Tan also denies that he conspired with co-respondent Delante in the alleged falsification of the entries in the latter's notarial register.

Complainant filed separate Replies<sup>[5]</sup> to the Comment/Answer of herein respondents.

In a Resolution<sup>[6]</sup> dated August 22, 2007, this Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation or decision. Thereafter, the Commission on Bar Discipline (*CBD*) of the IBP set the case for mandatory conference on January 29, 2009<sup>[7]</sup> and March 9, 2009,<sup>[8]</sup> but, on both dates, the complainant failed to appear. This prompted the IBP-CBD to issue an Order<sup>[9]</sup> dated March 9, 2009 to proceed with the mandatory conference and considered complainant's absence as a waiver of his right to participate in the said conference. In the same Order, the IBP-CBD required the parties to submit their respective verified position papers within ten (10) days from receipt of the same, after which the case shall be considered submitted for resolution.

Subsequently, the Investigating Commissioner<sup>[10]</sup> of the IBP-CBD issued his Report and Recommendation<sup>[11]</sup> dated April 19, 2011 which disposed as follows:

WHEREFORE, it is respectfully recommended that the complaint against respondents Atty. Jose R. Madrazo, Jr. and Atty. Antonio A. Tan be dismissed.

And it [is] recommended that respondent Atty. Leonido C. Delante be reprimanded and warned to be more careful in his duty as notary public, and in the event a similar error be committed by him in the future, the same should be dealt with more seriously.<sup>[12]</sup>

The Investigating Commissioner held that: there is want of evidence to "show that deceit, malpractice, or other gross misconduct attended the execution of the affidavits that were submitted by respondents Madrazo and Tan in behalf of their principals before the Philippine Coconut Authority"; based on the evidence on record, it has been shown that respondents Madrazo and Tan personally appeared before respondent Delante to subscribe to their affidavits; by reason of oversight due to voluminous work, Delante's secretary simply failed to enter the said Affidavits in Delante's Notarial Register.

Thereafter, the IBP Board of Governors issued Resolution No. XX-2013-273<sup>[13]</sup> dated March 20, 2013, adopting and approving the Report and Recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and for lack of evidence against Respondents Attys. Jose Madrazo, Jr. and Antonio V. Tan, the case against them is hereby DISMISSED. However, the recommendation against Atty. Leonido C. Delante is hereby unanimously REVERSED but is given a WARNING to be more careful in his duty as Notary Public and repetition of the same act shall be dealt with more severely. <sup>[14]</sup>

Complainant filed a Motion for Reconsideration<sup>[15]</sup> of the above Resolution reiterating his arguments in his Complaint. In addition, complainant mentioned that respondent Delante may no longer be warned nor reprimanded in the present case, considering that he was already disbarred in another case filed against him.

On March 23, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-185<sup>[16]</sup> denying complainant's Motion for Reconsideration.

In a letter<sup>[17]</sup> dated July 15, 2014, the IBP-CBD transmitted to this Court the above Resolutions of the IBP Board of Governors, as well as the records of the instant case, for final action, pursuant to Rule 139-B of the Rules of Court.

On September 4, 2014, complainant filed before this Court a Motion to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 Null and Void<sup>[18]</sup> on the ground that it was only the National Secretary of the IBP who signed the Resolution and that the IBP Investigating Commissioner inhibited from, and did not take part, in the issuance of the said Resolution.

In a Resolution<sup>[19]</sup> dated January 21, 2015, this Court resolved to treat complainant's Motion (to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 null and void) as a petition for review on *certiorari* under Rule 45 of the Rules of Court and required respondents to comment thereon.

Respondents Madrazo and Tan filed their joint Comment,<sup>[20]</sup> while complainant filed his Reply<sup>[21]</sup> thereto. Respondent Delante, on the other hand, failed to file his comment.

Thus, the Court will now proceed to determine whether respondents are liable as charged.

As a preliminary procedural matter, it is fit to note that the Resolution of this Court, which treated complainant's Motion (to Declare Resolution No. XXI-2014-185 Adm. Case No. 7231 Null and Void), was anchored on Bar Matter No. 1755<sup>[22]</sup> (*B.M. No. 1755*), which approved the Rules of Procedure of the Commission on Bar Discipline (*CBD*) of the IBP as a means of implementing the old Rule 139-B of the Rules of Court. In a clarificatory Resolution<sup>[23]</sup> dated June 17, 2008, this Court explained the application of the said Rules of Procedure in relation to the former Section 12, Rule 139-B of the Rules of Court. Pertinent portions of the June 17, 2008 Resolution provided, thus:

In case a decision is rendered by the BOG [IBP Board of Governors] that exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. **If the motion is denied, said party can file a petition for a review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion.** If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.<sup>[24]</sup>

However, Rule 139-B was later amended by Bar Matter No. 1645 (*B.M. No. 1645*), dated October 13, 2015. Thus, Section 12, Rule 139-B of the Rules of Court now reads as follows:

*Sec. 12. Review and Recommendation by the Board of Governors.*

a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.

b) **After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based.** The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.

**c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.**

d) Notice of the resolution shall be given to all parties through their counsel, if any.<sup>[25]</sup>

Hence, under the amended provisions of Section 12, Rule 139-B of the Rules of Court, a resolution of the IBP Board of Governors, arising from its review of the report of the IBP Investigator, and which either recommends the dismissal of the complaint or the imposition of disciplinary action against the respondent, shall be transmitted to the Supreme Court for final action. B.M. No. 1645 did away with the procedure of filing a motion for reconsideration as well as a petition for review of the resolution of the IBP Board of Governors.

On the basis of the foregoing, considering that the Resolution of the IBP Board of Governors has already been transmitted to and is pending review and final action by this Court, it is, thus, deemed proper, for reasons of expedience and for a more speedy disposition of the instant case, to recall and set aside this Court's January 21, 2015 Resolution treating complainant's Motion to Declare the March 23, 2014 Resolution of the IBP Board of Governors null and void as a petition for review on *certiorari* under Rule 45 of the Rules of Court.

The Court will, instead, proceed to take final action on the Complaint and on the IBP Board of Governors' Resolution adopting and approving the Investigating Commissioner's Report and Recommendation.

The basic issue for resolution in the present case is whether there is sufficient evidence to prove that respondents are guilty of fraud, malpractice, violation of the Notarial Law and other gross misconduct in connection with their submission and notarization of supposedly invalid and spurious documents attached to their application for Permit to Cut coconut trees on the disputed property.

After a review of the arguments and evidence submitted by the parties, this Court partly adopts the findings and conclusion of the IBP Board of Governors in its Resolutions dated March 20, 2013 and March 23, 2014.

It is settled that in disbarment and suspension proceedings against lawyers in this jurisdiction, the burden of proof rests upon the complainant. Thus, this Court has held that "in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, we have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence."

<sup>[26]</sup> A complainant's failure to dispense the same standard of proof requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.<sup>[27]</sup>

In the instant case, the Court agrees with both the Investigating Commissioner and the IBP Board of Governors that complainant failed to discharge his burden of proving the liability of respondents Madrazo and Tan with respect to his accusations against them. No proof was presented to show that the Affidavits of "No[n] Encumbrance" and "Marking the Coconut Trees," which were supposedly attached to