

## **SPECIAL FIRST DIVISION**

**[ A.C. No. 9000, January 10, 2018 ]**

**TOMAS P. TAN, JR., COMPLAINANT, V. ATTY. HAIDE V. GUMBA,  
RESPONDENT.**

### **D E C I S I O N**

**DEL CASTILLO, J.:**

This case is an offshoot of the administrative Complaint<sup>[1]</sup> filed by Tomas P. Tan, Jr. (complainant) against Atty. Haide V. Gumba (respondent), and for which respondent was suspended from the practice of law for six months. The issues now ripe for resolution are: a) whether respondent disobeyed a lawful order of the Court by not abiding by the order of her suspension; and b) whether respondent deserves a stiffer penalty for such violation.

#### ***Factual Antecedents***

According to complainant, in August 1999, respondent obtained from him a P350,000.00 loan with 12% interest *per annum*. Incidental thereto, respondent executed in favor of complainant an undated Deed of Absolute Sale<sup>[2]</sup> over a 105-square meter lot located in Naga City, and covered by Transfer Certificate of Title No. 2055<sup>[3]</sup> under the name of respondent's father, Nicasio Vista. Attached to said Deed was a Special Power of Attorney<sup>[4]</sup> (SPA) executed by respondent's parents authorizing her to apply for a loan with a bank to be secured by the subject property. Complainant and respondent purportedly agreed that if the latter failed to pay the loan in or before August 2000, complainant may register the Deed of Absolute Sale with the Register of Deeds (RD).<sup>[5]</sup>

Respondent failed to pay her loan when it fell due. And despite repeated demands, she failed to settle her obligation. Complainant attempted to register the Deed of Absolute Sale with the RD of Naga City but to no avail because the aforesaid SPA only covered the authority of respondent to mortgage the property to a bank, and not to sell it.<sup>[6]</sup>

Complainant argued that if not for respondent's misrepresentation, he would not have approved her loan. He added that respondent committed dishonesty, and used her skill as a lawyer and her moral ascendancy over him in securing the loan. Thus, he prayed that respondent be sanctioned for her infraction.<sup>[7]</sup>

In his Commissioner's Report<sup>[8]</sup> dated February 9, 2009, Commissioner Jose I. de la Rama, Jr. (Commissioner de la Rama) faulted respondent for failing to file an answer, and participate in the mandatory conference. He further declared that the SPA specifically authorized respondent to mortgage the property with a bank. He stressed that for selling the property, and not just mortgaging it to complainant, who was not even a bank, respondent acted beyond her authority. Having done so,

she committed gross violation of the Lawyer's Oath as well as Canon 1,<sup>[9]</sup> Rule 1.01,<sup>[10]</sup> and Canon 7<sup>[11]</sup> of the Code of Professional Responsibility. As such, he recommended that respondent be suspended from the practice of law for one year.

In the Resolution No. XIX-2010-446<sup>[12]</sup> dated August 28, 2010, the Integrated Bar of the Philippines - Board of Governors (IBP-BOG) resolved to adopt and approve the Report and Recommendation of Commissioner de la Rama.

#### *Action of the Supreme Court*

Thereafter, the Court issued a Resolution<sup>[13]</sup> dated October 5, 2011, which sustained the findings and conclusion of the IBP. The Court nonetheless found the reduction of the penalty proper, pursuant to its sound judicial discretion and on the facts of the case. Accordingly, it suspended respondent from the practice of law for six months, effective immediately, with a warning that a repetition of same or similar act will be dealt with more severely.

On March 14, 2012, the Court resolved to serve anew the October 5, 2011 Resolution upon respondent because its previous copy sent to her was returned unserved. <sup>[14]</sup> In its August 13, 2012 Resolution,<sup>[15]</sup> the Court considered the October 5, 2011 Resolution to have been served upon respondent after the March 14, 2012 Resolution was also returned unserved. In the same resolution, the Court also denied with finality respondent's motion for reconsideration on the October 5, 2011 Resolution.

Subsequently, Judge Margaret N. Armea (Judge Armea) of the Municipal Trial Court in Cities of Naga City, Branch 2 wrote a letter<sup>[16]</sup> inquiring from the Office of the Court Administrator (OCA) whether respondent could continue representing her clients and appear in courts. She also asked the OCA if the decision relating to respondent's suspension, which was downloaded from the internet, constitutes sufficient notice to disqualify her to appear in courts for the period of her suspension.

According to Judge Armea, her inquiry arose because respondent represented a party in a case pending in her court; and, the counsel of the opposing party called Judge Armea's attention regarding the legal standing of respondent to appear as counsel. Judge Armea added that respondent denied that she was suspended to practice law since she (respondent) had not yet received a copy of the Court's resolution on the matter.

In her Answer/Comment<sup>[17]</sup> to the query of Judge Armea, respondent countered that by reason of such downloaded decision, Judge Armea and Executive Judge Pablo Cabillan Formaran III (Judge Formaran III) of the Regional Trial Court (RTC) of Naga City disallowed her appearance in their courts. She insisted that service of any pleading or judgment cannot be made through the internet. She further claimed that she had not received an authentic copy of the Court's October 5, 2011 Resolution.

On January 22, 2013, the Office of the Bar Confidant (OBC) referred the October 5, 2011 Resolution to the OCA for circulation to all courts.<sup>[18]</sup> In response, on January 30, 2013, the OCA issued OCA Circular No. 14-2013<sup>[19]</sup> addressed to the courts,<sup>[20]</sup> the Office of Chief State Prosecutor (CSP), Public Attorney's Office (PAO), and the

IBP informing them of the October 5, 2011 and August 13, 2012 Resolutions of the Court.

### ***IBP's Report and Recommendation***

Meanwhile, in its Notice of Resolution No. XX-2013-359<sup>[21]</sup> dated March 21, 2013, the IBP-BOG resolved to adopt and approve the Report and Recommendation<sup>[22]</sup> of Commissioner Oliver A. Cachapero (Commissioner Cachapero) to dismiss the complaint against respondent. According to Commissioner Cachapero, there is no rule allowing the service of judgments through the internet; and Judge Armea and Judge Formaran III acted ahead of time when they implemented the suspension of respondent even before the actual service upon her of the resolution concerning her suspension.

### ***Statement and Report of the OBC***

In its November 22, 2013 Statement,<sup>[23]</sup> the OBC stressed that respondent received the August 13, 2012 Resolution (denying her motion for reconsideration on the October 5, 2011 Resolution) on November 12, 2012 per Registry Return Receipt No. 53365. Thus, the effectivity of respondent's suspension was from November 12, 2012 until May 12, 2013. The OBC also pointed out that suspension is not automatically lifted by mere lapse of the period of suspension. It is necessary that an order be issued by the Court lifting the suspension to enable the concerned lawyer to resume practice of law.

The OBC further maintained in its November 27, 2013 Report<sup>[24]</sup> that respondent has no authority to practice law and appear in court as counsel during her suspension, and until such time that the Court has lifted the order of her suspension. Thus, the OBC made these recommendations:

WHEREFORE, *in the light of the foregoing premises*, it is respectfully recommended that:

1. Respondent be REQUIRED to file a sworn statement with motion to lift order of her suspension, attaching therewith certifications from the Office of the Executive Judge of the court where she practices[h]er profession and IBP Local Chapter of which she is affiliated, that she has ceased and desisted from the practice of law from 12 November 2012 to 12 May 2013, immediately; and
2. The IBP be REQUIRED to EXPLAIN within 72 hours why they should not be sanctioned for disciplinary action for issuing said Notice of Resolution No. XX-2013-359, dated 21 March 2013, purportedly dismissing this case for lack of merit.<sup>[25]</sup>

On February 19, 2014, the Court noted<sup>[26]</sup> the OBC Report, and directed respondent to comply with the guidelines relating to the lifting of the order of her suspension as enunciated in *Maniago v. Atty. De Dios*.<sup>[27]</sup>

Upon the request of respondent, on December 2, 2014, the OBC issued a Certification,<sup>[28]</sup> which stated that respondent had been ordered suspended from the practice of law for six months, and as of the issuance of said certification, the order of her suspension had not yet been lifted.

## *Complaint against the OCA, the OBC and Atty. Paraiso*

On February 6, 2015, respondent filed with the RTC a verified Complaint<sup>[29]</sup> for nullity of clearance, damages, and preliminary injunction with urgent prayer for a temporary restraining order against the OCA, the OBC, and Atty. Nelson P. Paraiso (Atty. Paraiso). The case was docketed as Civil Case No. 2015-0007.

Essentially, respondent accused the OCA and the OBC of suspending her from the practice of law even if the administrative case against her was still pending with the IBP. She likewise faulted the OBC for requiring her to submit a clearance from its office before she resumes her practice of law after the suspension. In turn, she argued that Atty. Paraiso benefited from this supposed "bogus suspension" by publicly announcing the disqualification of respondent to practice law.

In its Answer,<sup>[30]</sup> the OCA argued that the RTC had no jurisdiction over the action, which seeks reversal, modification or enjoinder of a directive of the Court. The OCA also stressed that respondent should raise such matter by filing a motion for reconsideration in the administrative case, instead of filing a complaint with the RTC. It also stated that the issuance of OCA Circular No. 14-2013 was in compliance with the Court's directive to inform all courts, the CSP, the PAO, and the IBP of the suspension of respondent.

For its part, the OBC declared in a Report<sup>[31]</sup> dated March 24, 2015 that during and after the period of her suspension, without the same having been lifted, respondent filed pleadings and appeared in courts in the following cases:

x x x (1) Civil Case No. 2013-0106 (Romy Fay Gumba v. The City Assessor of Naga City, et. al.), (2) Civil Case No. RTC 2006-0063 (Sps. Jaime M. Kalaw et. al. v. Fausto David, et al.), (3) Other Spec. Proc. No. RTC 2012-0019 (Petition for Reconstitution of Transfer Certificate of Title No. 21128 of the Registry of Deeds of Naga City v. Danilo O. Laborado).  
<sup>[32]</sup>

The OBC likewise confirmed that as of the time it issued the March 24, 2015 Report, the Court had not yet lifted the order of suspension against respondent. The OBC opined that for failing to comply with the order of her suspension, respondent deliberately refused to obey a lawful order of the Court. Thus, it recommended that a stiffer penalty be imposed against respondent.

On June 4, 2015, the OBC reported that the RTC dismissed Civil Case No. 2015-0007 for lack of jurisdiction, and pending resolution was respondent's motion for reconsideration.<sup>[33]</sup>

### **Issue**

Is respondent administratively liable for engaging in the practice of law during the period of her suspension and prior to an order of the Court lifting such suspension?

### **Our Ruling**

Time and again, the Court reminds the bench and bar "that the practice of law is *not* a right but a mere privilege [subject] to the inherent regulatory power of the [Court],"<sup>[34]</sup> It is a "privilege burdened with conditions."<sup>[35]</sup> As such, lawyers must comply with its rigid standards, which include mental fitness, maintenance of