

## FIRST DIVISION

[ A.C. No. 11394, December 01, 2016 ]

**MARIA VICTORIA G. BELO-HENARES, COMPLAINANT, VS. ATTY. ROBERTO "ARREE" C. GUEVARRA, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

The instant administrative case arose from a verified complaint<sup>[1]</sup> for disbarment filed by complainant Maria Victoria G. Belo-Henares (complainant) against respondent Atty. Roberto "Argee" C. Guevarra (respondent) for alleged violations of Rules 1.01 and 1.02, Canon 1; Rule 7.03, Canon 7; Rule 8.01 of Canon 8; and Rule 19.01, Canon 19 of the Code of Professional Responsibility.

#### The Facts

Complainant is the Medical Director and principal stockholder of the Belo Medical Group, Inc. (BMGI), a corporation duly organized and existing under Philippine laws<sup>[2]</sup> and engaged in the specialized field of cosmetic surgery.<sup>[3]</sup> On the other hand, respondent is the lawyer of a certain Ms. Josefina "Josie" Norcio (Norcio), who filed criminal cases against complainant for an allegedly botched surgical procedure on her buttocks in 2002 and 2005, purportedly causing infection and making her ill in 2009.<sup>[4]</sup>

In 2009, respondent wrote a series of posts on his Facebook account, a popular online social networking site, insulting and verbally abusing complainant. His posts include the following excerpts:

Argee Guevarra **Quack Doctor Becky Belo: I am out to get *Puwitic* Justice here! Kiss My Client's Ass, Belo. Senator Adel Tamano, don't kiss Belo's ass.** Guys and girls, *nagiisip na akong tumakbo sa Hanghalan* 2010 to Kick some ass!!! I will launch a national campaign against Plastic Politicians No guns, No goons, No gold - IN GUTS I TRUST!

Argee Guevarra **Dr. Vicki Belo**, watch out for Josefina Norcio's Big Bang on Friday - **You will go down in Medical History as a QUACK DOCTOR!!!! QUACK QUACK QUACK QUACK.** CNN, FOX NEWS, BLOOMBERG, CHICAGO TRIBUNE, L.A. TIMES c/o my partner in the U.S., Atty. Trixie Cruz-Angeles :) (September 22 at 11:18pm)<sup>[5]</sup>

Argee Guevarra is amused by a libel case filed by Vicki Belo against me through her office receptionist in Taytay Rizal. **Haaaaay, style-bulok at style-duwag talaga. Lalakarin ng Reyna ng Kaplastikan at Reyna ng Payola ang kaso...** si Imelda Marcos *nga* sued me for P300 million pesos and ended up apologizing to me, *si Belo pa kaya?* (September 15 at 12:08pm)<sup>[6]</sup>

Argee Guevarra **get vicki belo as your client!!! may 'extra-legal' budget yon. Kaya lang, histado ko na kung sino-sino ang tumatanggap** *eh, pag nalaman mo, baka bumagsak pa isang ahensya ng gobyerno dito, hahaha* (August 9 at 10:31pm)<sup>[7]</sup>

Argee Guevarra ATTENTION MGA BATCHMATES SA DOJ: **TIMBREHAN NIYO AKO KUNG MAGKANONG PANGSUHOL NI BELO PARA MADIIN AKO HA????** I just [want] to know how much she hates me, ok? **Ang payola budget daw niya runs into tens of millions....** (September 15 at 3:57pm)<sup>[8]</sup>

Argee Guevarra **thinks aloud how the payola machinery of vicki belo killed the news of a picket demonstration in front of the Belo clinic.** I wonder how television, print[,] and radio programs can kill the story when the next rallies will have the following numbers 100, 200, 500 and 1000. *Kung magkaasaran pa, 10,000 demonstrators will be assembled in front of the Belo Medical Clinic at Tomas Morato on July 27, 2009. Hahahahaha!* (July 17 at 7:56pm)<sup>[9]</sup>

Argee Guevarra *Nakakatawa nga, 10milyon pa budget... [I] didn't know that my reputation is worth that much. Aba ako kaya magdemanda sa kanila :) Ikot-ikot daw ang mga P.R. ni Belo trying to convince editors to pin me down with something eh alam ko na wala naman akong sex video!!! Adik talaga sa botox si Aling Becky at may tama na sa utak - eh kung gagastos ka lang ng 10 milyon para sa tirang-pikon laban sa akin at to protect your burak na reputasyon as a plastic surgeon, i-donate mo na lang yon sa biktima ni Ondoy, Pepeng at Ramil! Yung mga homeboys ko sa Pasig na nilimas [ni] Ondoy ang kukubra sa yo!* (October 23 at 5:31pm)<sup>[10]</sup>

Argee Guevarra is inspired by Jose Norio's courageous act of showing her face on national television to expose

the **Reyna ng Kaplastikan, Reyna ng Kapalpak**. Inspired by shock nevertheless by the fact that the much needed partial restoration of her behind would cost a staggering \$500,000-\$1,000,000 Stanford Medical Hospital and she will still remain permanently disabled for the rest of her life... (July 11 at 2:08am)<sup>[11]</sup>

Argee Guevarra Just got my internet connection. **WILL EMAIL U THE LURID UNASSAILABLE FACTS ABOUT VICKI BELO'S QUACK DOCTORING.** (October 27, 2009)<sup>[12]</sup>

Argee Guevarra yeah... actually the issue is simple and you will easily see which side you'll be taking- just pay Ms. Josie Norcio a visit at St. Luke's **at talagang binabay siya ng Reyna ng Kaplastikan** (July 10 at 12:08am)<sup>[13]</sup>

The complaint further alleged that respondent posted remarks on his Facebook account that were intended to destroy and ruin BMGI's medical personnel, as well as the entire medical practice of around 300 employees for no fair or justifiable cause,<sup>[14]</sup> to wit:

Argee Guevarra yup... [I'll] even throw the kitchen sink at her. Enjoy *nga ito*, **we will paralyze the operations of all her clinic and seek out her patients and customers to boycott her.** [So] far, good response – 70% decrease in her July sales... (August 9 at 10:29pm)<sup>[15]</sup>

Argee Guevarra Guys, pandemonium has broken loose in [BMGI's] 6 clinics after Ms. Josie Norio's tell-all. With only 2 surgeons of BMGI certified by PAPRAS, there is real-and-present danger that surgeries like liposuction, nose lift, boob jobs which have been performed by [BMGI's] physicians, every patient runs the risk of something going wrong with the procedures they have undergone under [BMGI's] hands:(“ (July 12 at 12:21am)<sup>[16]</sup>

Argee Guevarra [T]hey perform plastic surgery procedures without licensed and trained doctors, they nearly killed a client of mine, medical malpractice, use of banned substances/fillers on patients. just recently, in flawless clinic, a patient who had a simple facial landed in the hospital ... (August 9 at 10:04pm)<sup>[17]</sup>

Argee Guevarra braces for typhoon Ramil without forgetting to ask comrades and friends in Cebu to greet Vicki Belo with a boycott once she visits there on Oct. 20. Cebu's royal set already knows that **she is not a certified plastic surgeon: Boycott Belo, Flawless Reckless, Belat Essentials!!!!** (October 18 at 6:23pm)<sup>[18]</sup>

Argee Guevarra [W]ell, **with all the kababuyan of the Belo clinic, its money-making machines, dapat convert them into public health clinics!!!** instead of pandering to the vanities of those who want to look like Dra. Belo. (July 11 at 2:16am)<sup>[19]</sup>

Argee Guevarra darling kellyn, so far, i have 3 other ex-belo patients who will tell all too!!!! **Grabe pala ang mga kapalpak niyan. So did u leave Belo Clinic because it has become a Frankenstein Factory?** (July 11 at 2:30am)<sup>[20]</sup>

Argee Guevarra **BOYCOTT BELO! FLAWLESS RECKLESS! BELAT ESSENTIALS!!!** I'll be gone for a week to a place where there will be no facebook so please, add Trixie Cruz-Angeles if you want to find out more about our anti-quack doctor campaign! (September 24 at 3:00pm)<sup>[21]</sup>

Argee Guevarra Anyone care to sponsor T-shirts bearing this slogan? - **BOYCOTT BELO! FLAWLESS RECKLESS! BELAT ESSENTIALS!** (September 23 at 12:17am)<sup>[22]</sup>

Argee Guevarra *Pare, eksena* on Thursday I will go to the hearing with a placard - **BOYCOTT BELO!!! FLAWLESS RECKLESS!!! BELAT ESSENTIALS!!!** I will vote for Adel Tamano (La Salle-Ateneo lower batch *sa akin at mabuti ang pamilya niyan*)... BUT WOULD YOU??? (September 23 at 1:50am)<sup>[23]</sup>

Argee Guevarra advocates a national patients' boycott of the Belo Medical Group. To all my friends and comrades, **please stay away from Belo's clinics.** I have 2 cousins and 3 friends already who have canceled their lipo from belo. **Please help me shut down the Belo Medical Group until they perform their moral and legal obligation to Ms. Josie Norcio...** (July 17 at 2:12pm)<sup>[24]</sup>

Moreover, respondent, through his Facebook account, posted remarks that allegedly threatened complainant with criminal conviction, without factual basis and without proof,<sup>[25]</sup> as follows:

Argee Guevarra Mr. Jay, by next year- GMA will no longer be president and she will be jailed for plunder; **Vicky Belo will no longer be a doctor and she will be in the middle of a criminal prosecution.** The General Surgeon of France will have a Philippine version. By October and November, some congressmen I have spoken with will be issuing summons to Vicky Belo for a congressional inquiry; the subject - legislation regulating the

practice of cosmetic surgery! (September 22 at 11:31pm)<sup>[26]</sup>

Argee Guevarra Celso de Los Angeles can still get medical attention in prison - from **Vicky Belo after she gets convicted too for criminal negligence and estafa** (July 15 at 10:05am)<sup>[27]</sup>

Argee Guevarra is preparing himself for a **campaign against the Belo Medical Group for its criminal negligence which nearly killed Ms. Josie Norcio over a botched butt augmentation procedure**. He found out that the Dr. Belo herself marketed the product to Ms. Norcio, the operation was carried out by her **doctors who were not licensed** by the Philippine Association of Plastic Reconstructive and Aesthetic Surgeons..... (July 9 at 8:54pm)<sup>[28]</sup>

Complainant likewise averred that some of respondent's Facebook posts were sexist, vulgar, and disrespectful of women, <sup>[29]</sup> to wit:

Argee Guevarra but can u help me too with maricar reyes? who's the hottest cebuana chic chick there nowadays? haven't been there for quite some time... *pa-chicks ka naman!!!* I'm sure *marami kang 25-and-below naprends diyam* (August 10 at 8:36pm)<sup>[30]</sup>

Argee Guevarra *hay joseph!!!* how's the gayest lawyer in cebu? our forces will soon picket the belo clinic there, can u tell me where that is? ***halato ko na sayo si hayden, promise!***" (August 10 at 12:23am)<sup>[31]</sup>

Argee Guevarra joseph, i can't say i love u too - *baka* belo's team will use all sorts of attacks na against me. to thwart them, being the gayest gay in the philippines, can u issue a certification that i am so not like your type? *at yung preferred ko lang ay thin, thalino and thisay?* (September 23 at 12:01am)<sup>[32]</sup>

Finally, complainant averred that the attacks against her were made with the object to extort money from her, as apparent from the following reply made by respondent on a comment on his Facebook post:<sup>[33]</sup>

Kellyn Conde Sy *utang mo! Pay up time:)* (July 11 at 2:37am)

Argee Guevarra kellyn, ***sisingilin ko muna si belo... at saka sabi mo naman, maibagsak ko lang ang kaplastikan ni belo, quits na tayo ...***(July 11 at 2:38am)<sup>[34]</sup>

Asserting that the said posts, written in vulgar and obscene language, were designed to inspire public hatred, destroy her reputation, and to close BMGI and all its clinics, as well as to extort the amount of P200 Million from her as evident from his demand letter<sup>[35]</sup> dated August 26, 2009, complainant lodged the instant complaint for disbarment against respondent before the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 09-2551.

In defense,<sup>[36]</sup> respondent claimed that the complaint was filed in violation of his constitutionally-guaranteed right to privacy,<sup>[37]</sup> asserting that the posts quoted by complainant were private remarks on his private account on Facebook, meant to be shared only with his circle of friends of which complainant was not a part.<sup>[38]</sup> He also averred that he wrote the posts in the exercise of his freedom of speech, and contended that the complaint was filed to derail the criminal cases that his client, Norcio, had filed against complainant.<sup>[39]</sup> He denied that the remarks were vulgar and obscene, and that he made them in order to inspire public hatred against complainant.<sup>[40]</sup> He likewise denied that he attempted to extort money from her, explaining that he sent the demand letter as a requirement prior to the filing of the criminal case for *estafa*, as well as the civil case for damages against her. <sup>[41]</sup> Finally, respondent pointed out that complainant was a public figure who is, therefore, the subject of fair comment.<sup>[42]</sup>

After the mandatory conference had been terminated,<sup>[43]</sup> the parties were directed to file their respective position papers.<sup>[44]</sup> Thereafter, the IBP, through the Commission on Bar Discipline (CBD), set the case for clarificatory hearing.<sup>[45]</sup> Upon termination thereof, the case was deemed submitted for report/recommendation.<sup>[46]</sup>

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

In its Report and Recommendation<sup>[47]</sup> dated August 13, 2013, the IBP-CBD recommended that respondent be suspended for a period of one (1) year from the practice of law, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.<sup>[48]</sup> It held respondent liable for violation of Rule 7.03,<sup>[49]</sup> Rule 8.01,<sup>[50]</sup> and Rule 19.01<sup>[51]</sup> of the Code of Professional Responsibility for having posted the above-quoted remarks on his Facebook account, pointing out that respondent cannot invoke the "private" nature of his posts, considering that he had at least 2,000 "friends" who can read and react thereto. Moreover, the IBP-CBD maintained that the criminal cases he had filed against complainant on

behalf of Norcio had been dismissed for insufficient evidence; therefore, he can no longer campaign against complainant whose alleged crimes against Norcio had not been established.<sup>[52]</sup>

In a Resolution<sup>[53]</sup> dated September 27, 2014, the IBP Board of Governors resolved to adopt and approve the August 13, 2013 Report and Recommendation of the IBP-CBD.

Respondent moved for reconsideration,<sup>[54]</sup> arguing that there was no specific act attributed to him that would warrant his suspension from the practice of law. He also averred that the libel cases filed against him by an employee of BMGI had already been dismissed, without prejudice, for lack of jurisdiction.<sup>[55]</sup>

In a Resolution<sup>[56]</sup> dated October 28, 2015, the IBP Board of Governors partially granted respondent's motion, reducing the penalty from one (1) year to six (6) months suspension.

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

The sole issue for the Court's resolution is whether or not respondent should be held administratively liable based on the allegations of the verified complaint.

### **The Court's Ruling**

The Court has examined the records of this case and concurs with the IBP's findings, except as to the penalty imposed on respondent.

At the outset, the Court notes that respondent never denied that he posted the purportedly vulgar and obscene remarks about complainant and BMGI on his Facebook account. In defense, however, he invokes his right to privacy, claiming that they were "private remarks" on his "private account"<sup>[57]</sup> that can only be viewed by his circle of friends. Thus, when complainant accessed the same, she violated his constitutionally guaranteed right to privacy.

The defense is untenable.

Facebook is currently the most popular social media site, having surpassed one (1) billion registered accounts and with 1.71 billion monthly active users.<sup>[58]</sup> *Social media* are web-based platforms that enable online interaction and facilitate users to generate and share content. There are various classifications<sup>[59]</sup> of social media platforms and one can be classified under the "social networking sites" such as Facebook.<sup>[60]</sup>

Facebook is a "voluntary social network to which members subscribe and submit information. x x x It has a worldwide forum enabling friends to share information such as thoughts, links, and photographs, with one another."<sup>[61]</sup> Users register at this site, create a personal profile or an open book of who they are, add other users as friends, and exchange messages, including automatic notifications when they update their profile. A user can post a statement, a photo, or a video on Facebook, which can be made visible to anyone, depending on the user's privacy settings.<sup>[62]</sup>

To address concerns about privacy, but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile, as well as information uploaded by the user. In *H v. W*,<sup>[63]</sup> the South Gauteng High Court of Johannesburg, Republic of South Africa recognized this ability of the users to "customize their privacy settings," but with the cautionary advice that although Facebook, as stated in its policies, "makes every effort to protect a user's information, these privacy settings are however not foolproof."<sup>[64]</sup>

Consequently, before one can have an expectation of privacy in his or her online social networking activity - in this case, Facebook - it is first necessary that said user manifests the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. This intention can materialize in cyberspace through the utilization of Facebook's privacy tools. In other words, utilization of these privacy tools is the manifestation, in the cyber world, of the user's invocation of his or her right to informational privacy.<sup>[65]</sup>

The bases of the instant complaint are the Facebook posts maligning and insulting complainant, which posts respondent insists were set to private view. However, the latter has failed to offer evidence that he utilized any of the privacy tools or features of Facebook available to him to protect his posts, or that he restricted its privacy to a select few. Therefore, without any positive evidence to corroborate his statement that the subject posts, as well as the comments thereto, were visible only to him and his circle of friends, respondent's statement is, at best, self-serving, thus deserving scant consideration.<sup>[66]</sup>

Moreover, even if the Court were to accept respondent's allegation that his posts were limited to or viewable by his "Friends" only, there is no assurance that the same - or other digital content that he uploads or publishes on his Facebook profile - will be safeguarded as within the confines of privacy, in light of the following:

- (1) Facebook "allows the world to be more open and connected by giving its users the tools to interact and share in any conceivable way";