

## THIRD DIVISION

[ G.R. No. 171634, August 17, 2011 ]

**LEONARDO S. UMALE, SUBSTITUTED BY CLARISSA VICTORIA UMALE,<sup>[1]</sup> PETITIONER, VS. ATTY. ALFREDO VILLAMOR, JR., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This is a petition for review of the Resolution of the Board of Governors of the Integrated Bar of the Philippines in CBD Case No. 05-417 dismissing the Complaint for Disbarment filed by petitioner against respondent.

On April 22, 2005, petitioner filed a Complaint for Disbarment<sup>[2]</sup> before the Commission on Bar Discipline, Integrated Bar of the Philippines (IBP) against respondent for committing acts violative of the Code of Professional Responsibility.

The factual background of the Complaint was culled from the facts stated in petitioner's Complaint in Civil Case No. 70251, entitled **Leonardo S. Umale v. Atty. Alfredo Villamor, Jr., et al.**, which was filed by petitioner before the Regional Trial Court (RTC) of Pasig City on January 13, 2005.

Petitioner stated that within the business district of Pasig City lies several hectares of land, referred to as the Payanig Property, which belongs to Mid-Pasig Land Development Corporation (Mid-Pasig). Mid-Pasig is a corporation surrendered by the Campos family to the Presidential Commission on Good Government (PCGG). Since obtaining control of the Payanig property, the PCGG, through Mid-Pasig, has leased, and granted options to lease parcels of the said property. The Pasig Printing Corporation (PPC) was awarded a lease contract over a 5,000-square-meter property located along Meralco Avenue.

Petitioner alleged that sometime in 2003, PPC officers approached him with a proposal for a business venture for the development of property. Petitioner expressed interest to develop not only the 5,000-square-meter property, but also other parcels of land within the Payanig property, some of which were under litigation. PPC agreed to negotiate with Mid-Pasig for the right over these other parcels of land. In exchange for petitioner's commitment to develop the 5,000-square-meter property, now known as Metrowalk, PPC allegedly committed to deliver to petitioner the proceeds obtained from some of these litigated parcels of land.

Moreover, petitioner alleged that during the development of the property occupied by Metrowalk, petitioner and PPC worked to obtain rights to the other litigated parcels of the Payanig Property, including the land occupied by MC Home Depot, located at the corner of Meralco Avenue and Ortigas Avenue. The rights to MC

Home Depot was being litigated with a former lease holder, Rockland Construction Company. In consideration of petitioner's efforts, work and investment, PPC allegedly agreed that in the event that it obtained any rights or interests, concessions, option, contract and/or proceeds in relation to the parcel of land occupied by MC Home Depot, the said rights or interest would belong to petitioner, and that any proceeds and/or checks obtained would be remitted immediately to petitioner as the beneficial owner.

Subsequently, after negotiations with Mid-Pasig for an option to lease the property occupied by MC Home Depot, petitioner stated that he used his personal funds to pay to Mid-Pasig, on May 1, 2004, the option money for the lease of the said property.

To protect his interest in the MC Home Depot property, petitioner allegedly requested respondent Atty. Alfredo Villamor, Jr. -- a lawyer he personally knew and who was acceptable to all investors whom he transacted with -- to negotiate and act in his behalf and PPC in relation to the MC Home Depot property. Respondent allegedly knew about the agreement between petitioner and PPC.

To safeguard his interest in the proceeds, petitioner allegedly required respondent to insist that any agreement with MC Home Depot, Inc. must contain two conditions: (1) that in the event of default in payments, petitioner's personal lawyer, Atty. E. Hans S. Santos, would have the right and authority to recover actual possession over the property, and that this authority could not be rescinded or revoked without the consent of Atty. E. Hans S. Santos; and (2) that all check payments be issued payable to "Cash" and not payable to PPC, so that these checks could be immediately turned over and delivered to petitioner who could encash, negotiate them or rediscount them as he saw fit. Petitioner stated that the Memorandum of Agreement (MOA) dated November 22, 2004, executed between PPC and MC Home Depot, Inc., included these two conditions.

Moreover, under the terms of the MOA, MC Home Depot, Inc. agreed to pay PPC P4.5 million per month for the next four years for the use and occupation of the property, and P18 million as goodwill. Pursuant to the agreement, the officers of MC Home Depot, Inc. issued a total of 20 pay-to-cash checks in payment for the agreed monthly rate and for goodwill. Respondent allegedly received these checks from MC Home Depot, Inc. in behalf of petitioner as the beneficial owner.

Petitioner alleged that three of the 20 checks totaling P9.5 million, and all dated November 2004, were promptly turned over to him, and also all proceeds in relation to the MC Home Depot property. However, respondent continued to hold on to the other 17 checks dated December 2004 to October 2005, which were not turned over by respondent despite repeated demands. Subsequently, respondent delivered only two checks totaling four million pesos (P4 million) and cash in the amount of P1.5 million on January 7, 2005 and January 10, 2005.

According to petitioner, the crux of the dispute in Civil Case No. 70251 was respondent's refusal to deliver to him checks and proceeds from MC Home Depot, Inc. issued and given pursuant to the MOA dated November 22, 2004. Petitioner claimed that respondent received those checks and proceeds in trust for him (petitioner), as respondent was fully aware of the arrangement between him (petitioner) and PPC.

Petitioner contends that in regard to his application for preliminary mandatory injunction/temporary restraining order in Civil Case No. 70251, respondent filed an Opposition thereto justifying his refusal to deliver the amounts demanded on the grounds that:

1. Respondent received the checks for and in behalf of PPC as its attorney-in-fact.
2. PPC has an ostensible right to the checks under the provisions of the contract.<sup>[3]</sup>
3. The contract was between the issuer of the checks, MC Home Depot, Inc., and PPC, represented therein by respondent, and petitioner was not a party to the agreement between MC Home Depot, Inc. and PPC.<sup>[4]</sup>

Petitioner further contended that the rights and interests of PPC over the proceeds from MC Home Depot Inc. was waived, assigned and transferred to the Defensor Briones Villamor and Tolentino Law Offices without any consideration per the Minutes of the Special Meeting of the Board of Directors of PPC dated November 11, 2004.<sup>[5]</sup>

Petitioner learned that respondent never delivered or turned over to PPC any amount received by him from MC Home Depot, Inc. On April 13, 2005, petitioner sent a demand letter to respondent requiring an explanation for the waiver, as well as the misrepresentation in the pleadings, but respondent failed and refused to explain why they failed to remit the proceeds to him or to PPC.

Petitioner claimed that respondent lied in his pleadings in Civil Case No. 70251, stating that he was an attorney-in-fact of PPC, when respondent allegedly knew that he was not, which was violative of the duty of respondent as a lawyer to be truthful to the courts, and truthful in his pleadings.<sup>[6]</sup>

Petitioner also contended that whether he or PPC is the client, the fact remains that respondent kept the proceeds from MC Home Depot, Inc, which he admittedly received, and respondent did not turn over the checks to him or to PPC, his alleged principal, in violation of his duty and responsibility as a lawyer.<sup>[7]</sup>

In addition, petitioner stated that it appears from the Minutes of the Special Meeting of the Board of Directors of PPC dated November 11, 2004 that the fees due to the Defensor Briones Villamor and Tolentino Law Offices for legal services performed for PPC amounts to over P200 million. Petitioner contends that the amount received and pocketed by respondent and/or the Defensor Briones Villamor and Tolentino Law Offices is staggering, shocking and unconscionable, and violative of Canon 20 of the Code of Professional Responsibility, which states, "A lawyer shall charge only fair and reasonable fees."

In his Answer, respondent denied that the complaint was instituted for a valid cause, and stated that it was another harassment suit filed against him by petitioner. He

stated that in Civil Case No. 70251 before the RTC of Pasig City, petitioner failed to obtain a temporary restraining order and he has not been granted any provisional remedy with respect to the checks being claimed by him.

Respondent categorically denied the charge of deliberate misrepresentation made in the pleadings. He asserted that the pleadings clearly showed that the legal arguments advanced therein were to oppose petitioner's application for injunctive writ and temporary restraining order.

Respondent stated that whatever rights PPC had under the "Option to Lease that portion of the property commonly known as the MC Home Depot" were subject of waiver, assignment and transfer in his favor, acting as counsel for an undisclosed client. He stated that PPC's rights were then subject of pending litigation between claimants and there was nothing certain and definite as to whether PPC would be able to obtain possession of the MC Home Depot property without it incurring more expenses due to the pending litigation involving the right to possession of the said property; thus, PPC did not see any practical and beneficial outcome from the said option. Respondent alleged that the option money PPC paid for the lease of the MC Home Depot property was used to pay for another option to lease covering the "Rockland area." Hence, insofar as the MC Home Depot property was concerned, PPC did not pay anything therefor nor lost anything by the waiver in favor of respondent.

Respondent alleged that in consideration of the waiver by PPC, he strove to obtain legal possession of the MC Home Depot property and was successful in defeating other claimants thereto. To protect the rights of PPC regarding the MC Home Depot property, respondent dealt with the owner of MC Home Depot property, Mid-Pasig, for the purpose of formalizing a lease contract over the MC Home Depot property and the acceptance by Mid-Pasig of respondent's offer of reasonable compensation for the use of the MC Home Depot property. In addition, respondent undertook to free PPC from any liability for any tax incidents which may arise out of the MOA over the MC Home Depot property.

Respondent stated that whatever is due to petitioner has already been received by him, and petitioner admitted in his Complaint that he already received P15 million.

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Respondent contended that he has not committed any violation of any provision of the Code of Professional Responsibility and any of his sworn responsibilities and duties encompassed in his oath as a lawyer.

Petitioner filed a Request for Admission dated July 7, 2005.

In his Reply,<sup>[9]</sup> respondent admitted the existence and genuineness of the Opposition (To Application for Preliminary/Mandatory Injunction/ Temporary Restraining Order (TRO)/Temporary Mandatory Injunction) and the Memorandum (Opposition to Application for TRO) filed in Civil Case No. 70251. Respondent also admitted the demand letter dated January 10, 2005 and respondent's Reply thereto dated January 11, 2005.

Respondent averred that he had no duty to remit, either to petitioner or to PPC any premiums or rentals from the MC Home Depot property. Respondent stated that

with respect to the premiums and rentals and/or checks due from the MC Home Depot property for the period from December 2004 up to October 2005, he acted as lawyer for a client with regard to the premiums and rentals or checks due from the MC Home Depot property, and he is barred and prevented by his confidential relations with his said client to disclose, without permission from the client, any communications which he and his client may have made regarding the subject of the lawyer-client relationship.

On September 9, 2005, Investigating Commissioner Dennis A.B. Funa of the Commission on Bar Discipline of the IBP submitted a Report and Recommendation on the disbarment case. He stated that the two issues to be settled in this case are: (1) the alleged non-remittance by respondent to petitioner of the rental proceeds from the MC Home Depot, Inc.; and (2) the alleged misrepresentation by respondent as to his relation with PPC.

In regard to the first issue, petitioner claimed that the checks received by respondent should have been remitted to him as the "beneficial owner." However, Commissioner Funa stated that petitioner did not adduce any documentary or testimonial evidence showing that he is the real or intended beneficiary of the MOA dated November 22, 2004. He found it strange that a commercial and business transaction worth more or less P200 million would have no signed documentation to show petitioner's beneficial ownership or other financial interest. He averred that PPC could have validated petitioner's undocumented claim that he is the "beneficial owner" of the subject checks, but it did not do so.

The second issue of misrepresentation by respondent referred to the statement in the pleadings filed in Civil Case No. 70251 that respondent was the attorney-in-fact of PPC, when PPC had previously waived, assigned and transferred its rights over the MC Home Depot property in favor of respondent's law firm. In defense, respondent contended that he never stated that he was an attorney-in-fact of PPC, but rather such claim was made in a pleading signed by another lawyer, Atty. Raul Ibay Tolentino, and not by him.

Commissioner Funa observed that a reading of the said pleadings<sup>[10]</sup> showed that they were not signed by respondent. Moreover, assuming that respondent did claim and act as attorney-in-fact of PPC, it could not be readily said that this position would conflict with the waiver, assignment and transfer of PPC's interests to respondent's law firm and, therefore, constitute misrepresentation. Commissioner Funa stated that respondent's receipt of the checks had not been repudiated or challenged by PPC or by respondent's law firm; thus, it could be concluded that respondent's receipt of the checks was with the consent and agreement of both PPC and respondent's law firm. Any irregularity in respondent's behavior should have been challenged by either PPC or respondent's law firm, as they were the parties that would be directly affected by any misrepresentation on the part of respondent.

Commissioner Funa averred that whether respondent received the checks on behalf of PPC or on behalf of respondent's law firm was immaterial to petitioner, who was not party in the said agreement. He stated that it was possible that respondent received the checks to be turned over to his law firm with the consent and agreement of PPC. The assignee and transferee is respondent's law firm and not respondent himself. Commissioner Funa held that the charge of misrepresentation, so as to impute deceit, malice or evil intent, has not been satisfactorily established.