

## SECOND DIVISION

[ A.C. No. 6567, April 16, 2008 ]

**JOSE C. SABERON, Complainant, vs. ATTY. FERNANDO T. LARONG, Respondent.**

### D E C I S I O N

**CARPIO MORALES, J.:**

In a Complaint<sup>[1]</sup> filed before the Office of the Bar Confidant, this Court, complainant Jose C. Saberon (complainant) charged Atty. Fernando T. Larong (respondent) of grave misconduct for allegedly using abusive and offensive language in pleadings filed before the *Bangko Sentral ng Pilipinas* (BSP).

The antecedent facts of the case are as follows:

Complainant filed before the BSP a Petition<sup>[2]</sup> against Surigaonon Rural Banking Corporation (the bank) and Alfredo Tan Bonpin (Bonpin), whose family comprises the majority stockholders of the bank, for cancellation of the bank's registration and franchise. The Petition, he said, arose from the bank's and/or Bonpin's refusal to return various checks and land titles, which were given to secure a loan obtained by his (complainant's) wife, despite alleged full payment of the loan and interests.

Respondent, in-house counsel and acting corporate secretary of the bank, filed an Answer with Affirmative Defenses<sup>[3]</sup> to the Petition stating, *inter alia*,

5. That this is another in the series of **blackmail** suits filed by plaintiff [herein complainant Jose C. Saberon] and his wife to coerce the Bank and Mr. Bonpin for financial gain -

x x x x.<sup>[4]</sup> (Emphasis and underscoring supplied)

Respondent made statements of the same tenor in his Rejoinder<sup>[5]</sup> to complainant's Reply.

Finding the aforementioned statements to be "totally malicious, viscous [*sic*] and bereft of any factual or legal basis," complainant filed the present complaint.

Complainant contends that he filed the Petition before the BSP in the legitimate exercise of his constitutional right to seek redress of his grievances; and that respondent, as in-house counsel and acting corporate secretary of the bank, was fully aware that the loan obtained by his (complainant's) wife in behalf of "her children" had been paid in full, hence, there was no more reason to continue holding the collaterals.

Complainant adds that respondent aided and abetted the infliction of damages upon

his wife and "her children" who were thus deprived of the use of the mortgaged property.

In his Comment<sup>[6]</sup> to the present complaint against him, respondent argues that: (1) there was "nothing abusive, offensive or otherwise improper" in the way he used the word "blackmail" to characterize the suit against his clients; and (2) when a lawyer files a responsive pleading, he is not in any way aiding or abetting the infliction of damages upon the other party.

By Resolution of March 16, 2005,<sup>[7]</sup> the Court referred the case to the Integrated Bar of the Philippines for investigation, report and recommendation.

In his Report and Recommendation dated June 21, 2006,<sup>[8]</sup> IBP Investigating Commissioner Dennis A. B. Funa held that the word "blackmail" connotes something sinister and criminal. Unless the person accused thereof is criminally charged with extortion, he added, it would be imprudent, if not offensive, to characterize that person's act as blackmail.

Commissioner Funa stressed that a counsel is expected only to present factual arguments and to anchor his case on the legal merits of his client's claim or defense in line with his duty under Rule 19.01 of the Code of Professional Responsibility, as follows:

A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

Moreover, he noted that in espousing a client's cause, respondent should not state his personal belief as to the soundness or justice of his case pursuant to Canon 15<sup>[9]</sup> of the Code of Professional Responsibility.

The Investigating Commissioner also opined that by using words that were "unnecessary and irrelevant to the case," respondent went "overboard and crossed the line" of professional conduct. In view thereof, he recommended that respondent be found culpable of gross misconduct and suspended from the practice of law for 30 days.

By Resolution No. XVII-2007-036 of January 18, 2007,<sup>[10]</sup> the IBP Board of Governors disapproved the recommendation and instead dismissed the case for lack of merit.

The Commission on Bar Discipline, by letter of March 26, 2007, transmitted the records of the case to this Court.<sup>[11]</sup>

Complainant appealed the Resolution of the IBP Board of Governors to this Court via a petition filed on March 7, 2007, under Section 12 (c) of Rule 139-B<sup>[12]</sup> of the Revised Rules of Court.

Complainant challenges the IBP Board of Governor's Resolution as illegal and void *ab initio* for violating the mandatory requirements of Section 12(a) of Rule 139-B of

the Revised Rules of Court that the same be "reduced to writing, clearly and distinctly stating the facts and the reasons on which it is based."

Finding the ruling of the Investigating Commissioner that respondent is guilty of grave misconduct to be in accordance with the evidence, complainant nevertheless submits that the recommended penalty of suspension should be modified to disbarment. The offense committed by respondent, he posits, manifests an evil motive and is therefore an infraction involving moral turpitude.

In his Comment to [the] Petition for Review, respondent states that the administrative complaint against him is a harassment suit given that it was in his capacity as counsel for the bank and Bonpin that he filed the Answer objected to by complainant.

Moreover, respondent claims that the purportedly offensive allegation was a statement of fact which he had backed up with a narration of the chronological incidents and suits filed by complainant and his wife against his clients. That being the case, he contends that the allegation made in the Answer must be considered absolutely privileged just like allegations made in any complaint or initiatory pleading.

Respondent in fact counters that it was complainant himself who had made serious imputations of wrongdoing against his clients - the bank for allegedly being engaged in some illegal activities, and Bonpin for misrepresenting himself as a Filipino.

Nonetheless, respondent pleads that at the time the allegedly abusive and offensive language was used, he was only two years into the profession, with nary an intention of bringing dishonor to it. He admits that because of some infelicities of language, he may have stirred up complainant's indignation for which he asked the latter's and this Court's clemency.

In his Reply,<sup>[13]</sup> complainant counters that respondent's Comment reveals the latter's propensity to deliberately state a falsehood; and that respondent's claim that the administrative complaint was a "harassing act," deducible from the "fact that [it] post-dates a series of suits, none of which has prospered x x x against the same rural bank and its owner," is bereft of factual basis.

Complainant goes on to argue that respondent, as counsel for Bonpin, knew of the two criminal cases he and his wife had filed against Bonpin and, as admitted by respondent, of the criminal charges against him for libel arising from his imputations of blackmail, extortion or robbery against him and his wife.

Finally, complainant refuses to accede to respondent's entreaty for clemency.

This Court finds respondent guilty of simple misconduct for using intemperate language in his pleadings.

The Code of Professional Responsibility mandates:

CANON 8 - A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

CANON 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients.<sup>[14]</sup>

However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language.<sup>[15]</sup> Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.<sup>[16]</sup>

On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.<sup>[17]</sup> In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings must be dignified.<sup>[18]</sup>

It is of no consequence that the allegedly malicious statements of respondent were made not before a court but before the BSP. A similar submission that actuations of and statements made by lawyers before the National Labor Relations Commission (NLRC) are not covered by the Code of Professional Responsibility, the NLRC not being a court, was struck down in *Lubiano v. Gordolla*,<sup>[19]</sup> thus:

Respondent became unmindful of the fact that in addressing the National Labor Relations Commission, he nonetheless remained a member of the Bar, an oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and whose conduct ought to be and must be scrupulously observant of law and ethics.<sup>[20]</sup>

The observation applies with equal force to the case at bar.

Respecting respondent's argument that the matters stated in the Answer he filed before the BSP were privileged, it suffices to stress that lawyers, though they are allowed a latitude of pertinent remark or comment in the furtherance of the causes they uphold and for the felicity of their clients, should not trench beyond the bounds of relevancy and propriety in making such remark or comment.<sup>[21]</sup>

True, utterances, petitions and motions made in the course of judicial proceedings have consistently been considered as absolutely privileged, however false or malicious they may be, but only for so long as they are pertinent and relevant to the subject of inquiry.<sup>[22]</sup> The test of relevancy has been stated, thus: