

## FIRST DIVISION

[ A.C. NO. 5653, February 27, 2006 ]

**JOHN SIY LIM, COMPLAINANT, VS. ATTY. CARMELITO A. MONTANO, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

Atty. Carmelito A. Montano stands charged with gross misconduct relative to his filing of Civil Case No. C-19928 entitled *Spouses Tomas See Tuazon and Natividad See Deecho v. John Siy Lim and the Register of Deeds of Caloocan City*.<sup>[1]</sup>

It appears that complainant John Siy Lim was the defendant in Civil Case No. C-14542 for reformation of contract, quieting of title, with damages, then pending before the Regional Trial Court (RTC) of Caloocan City, Branch 131.<sup>[2]</sup> The subject of the dispute was a 650-square meter conjugal lot along A. del Mundo Street, 7<sup>th</sup> Avenue, Caloocan City covered by Transfer Certificate of Title (TCT) No. 860. After trial, the RTC ruled in favor of defendant (complainant herein), and declared that the deed of sale the parties executed on July 15, 1987 was an absolute and unconditional conveyance of subject property by the plaintiff in favor of such defendant. On motion for reconsideration, however, the trial court reversed itself and declared that the sale was in fact an equitable mortgage. It thus ordered the cancellation of TCT No. 152621 and the reinstatement of the previous title on the subject property.

The complainant appealed the case to the Court of Appeals, docketed as CA-G.R. CV No. 40167. In its Decision dated March 31, 1995, the appellate court reversed the ruling of the RTC, to wit:

WHEREFORE, the appealed Order dated November 16, 1992, is hereby REVERSED and SET ASIDE, and the original Decision of the trial court, dated December 2, 1991, hereby REINSTATED, with the modification that plaintiff-appellee is ordered to pay defendant-appellant the sum of Five Thousand (P5,000.00) Pesos a month as reasonable rental for the use and occupation of Apartment No. 161 from July 15, 1988 until the premises shall have been vacated and possession thereof peacefully turned over to defendant-appellant.

The counterclaim for attorney's fees of defendant-appellant is DENIED. There is no clear showing that the action taken by plaintiff-appellee was done in bad faith. There should be no penalty on the right to litigate.<sup>[3]</sup>

The aggrieved party elevated the matter to this Court, and the petition was docketed as G.R. No. 119794. On October 3, 2000, the Court affirmed the ruling of the CA and denied the petition.<sup>[4]</sup> *Entry of judgment was made of record on October*

3, 2000.<sup>[5]</sup>

On January 4, 2002, respondent filed a Notice of Appearance<sup>[6]</sup> as counsel of Tomas See Tuazon (the losing party) in the RTC of Caloocan City, Branch 131 in Civil Case No. C-14542. On January 7, 2002, he filed, in behalf of his client, a "Motion to Comply to [*sic*] Decision without Writ,"<sup>[7]</sup> worded as follows:

**1. Plaintiff is aware that pursuant to the decision of the court, as affirmed by the Court of Appeals and the Supreme Court, the decision on the present case had already become final and executory.**

2. In order to avoid undue inconvenience on the part of herein defendant, plaintiff shall voluntarily settle the money judgment as stated in the decision sought to be enforced.

3. The plaintiff will be filing ***Eight Hundred Ten Thousand (P810,000.00) Pesos***, equivalent to 162 months of rent as per decision and the same to be covered by supersedeas bond issued by a reliable insurance company to answer for said obligation.

4. Every month starting February 15, 2002, plaintiff shall deposit to the court the amount of P5,000.00 as monthly rent.<sup>[8]</sup>

*On the same date, respondent, in behalf of his clients (the spouses Tomas See Tuazon) filed the Complaint<sup>[9]</sup> for nullity of TCT and other documents, reconveyance, maintenance of physical possession before the RTC of Caloocan City, eventually raffled to Branch 121 thereof (Civil Case No. C-19928).*

Meantime, on February 19, 2002, Judge Luisito C. Sardillo of Branch 126<sup>[10]</sup> issued an Order<sup>[11]</sup> in Civil Case No. C-14542 granting the Motion for Execution with Manifestation earlier filed by the prevailing party (complainant herein), and denying for lack of merit, the "Motion to Comply to [*sic*] Decision without Writ" filed by respondent counsel.

This prompted the complainant to file the instant complaint for disbarment against respondent. In his Complaint-Affidavit<sup>[12]</sup> dated March 20, 2002, complainant alleged that respondent filed the complaint in Civil Case No. C-19928 out of malice, pointing out that it involves "the same parties, the same causes of action and relief prayed for as that of Civil Case No. C-14542." Thus, the complainant prayed that the respondent be "disbarred and/or suspended from the practice of law for his gross misconduct," on the following allegation:

6. Evidently, I have been subjected to harassment by the antics of the respondent in filing a recycled case docketed as Civil Case No. C-19928 on January 07, 2002. Respondent is guilty in abetting the conduct of his clients, Sps. Tuazon. He has clearly violated his lawyer's oath not to promote or sue groundless, false or unlawful suits among others. Instead of counseling his clients to abide and obey the decision of our Supreme Court, the final arbiter of all controversies and disputes, he is showing disrespect to a final and executory decision of our court.<sup>[13]</sup>

In his Comment,<sup>[14]</sup> respondent denied the allegations against him. While he admitted that he filed Civil Case No. C-19928 as counsel for the plaintiff therein, he claimed that it was not filed with malicious intent. Moreover, while the new case involved the same party, it was for a different cause of action and relief, and, as such, the principle of *res judicata* did not apply. He further explained that the complaint in Civil Case No. C-14542 was for declaratory relief or reformation of instrument, while Civil Case No. 19928 was for annulment of title. He accepted the case based on "his professional appreciation that his client had a good case."

In his Reply,<sup>[15]</sup> the complainant stressed that the respondent was guilty of forum shopping; Civil Case No. C-19928 was nothing but a revival of the old complaint; and "the lame excuse of the respondent that the present case is an action in rem while the other case is an action *in personam*" did not merit consideration.

On November 25, 2002, the Court resolved to refer the matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>[16]</sup>

On September 1, 2003, the IBP Commission on Bar Discipline assigned the case to Commissioner Salvador L. Peña. Only the counsel for the respondent appeared at the mandatory conference held on September 30, 2003. Finding that there were no factual issues in the case, Commissioner Peña terminated the mandatory conference and ordered the parties to submit their respective verified Position Papers, and, thereafter, considered the case submitted for resolution.

The case was re-assigned to Commissioner Doroteo B. Aguila who submitted his Report and Recommendation dated May 9, 2005, finding the respondent guilty of misconduct. It was recommended that respondent be meted a two months' suspension from the practice of law.

According to the Investigating Commissioner, the elements of *res judicata* are present in this case as to bar the filing of Civil Case No. C-19928 since (a) the judgment in Civil Case No. C-14542, upholding the validity of the absolute deed of sale, had attained finality; (b) the court which rendered the decision had the required jurisdiction; and (c) the disposition of the case was a judgment on the merits.

On October 22, 2005, the Board of Governors of the IBP Commission on Bar Discipline issued Resolution No. XVII-2005-108, adopting said Report and Recommendation with the modification that respondent be suspended from the practice of law for six (6) months.

We agree that respondent is administratively liable.

In this case, it is clear that respondent is guilty of forum shopping. By his own admission, he was aware that Civil Case No. C-14542 was already final and executory when he filed the second case (Civil Case No. C-19928). His allegation that he "was not the original counsel of his clients" and that "when he filed the subsequent case for nullity of TCT, his motive was to protect the rights of his clients whom he believed were not properly addressed in the prior case for reformation and quieting of title," deserves scant consideration. As a responsible member of the bar, he should have explained the effect of such final and executory decision on his