

EN BANC

[A.C. No. 5438, March 10, 2004]

**DAN JOEL V. LIM^[*] AND RICHARD C. TAN, COMPLAINANTS, VS.
ATTY. EDILBERTO BARCELONA, RESPONDENT.**

RESOLUTION

PER CURIAM:

On May 9, 2001, Dan Joel V. Lim and Richard C. Tan,^[1] both businessmen, filed a complaint for alleged robbery or extortion and violation of the *Anti-Graft and Corrupt Practices Act* against Atty. Edilberto Barcelona, a lawyer formerly employed with the National Labor Relations Commission (NLRC). The complaint was simultaneously filed with this Court and the Integrated Bar of the Philippines.^[2]

Complainant Lim alleged that on the first week of August 2000, respondent phoned him and introduced himself as a lawyer and chief of the Public Assistance Center, NLRC. Respondent informed him that his employees filed a labor complaint against him in his office and it was necessary for him to see and talk with respondent. From then on respondent would often call him. Respondent visited him in his office and told him to settle the case or else his business, Top Gun Billiards, would be shut down. Lim recalled that on August 14, 2000, at around 7:30 p.m., respondent again visited his establishment and told him to settle the case for P20,000.00.

In support of his allegations, Lim submitted a written complaint of Arnel E. Ditan and Pilipino Ubante; an endorsement letter dated August 2, 2000 of Atty. Jonathan F. Baligod of the Presidential Action Center; handwritten calling cards of the respondent; and an affidavit of desistance executed by Ditan and Ubante.

In their joint affidavit, Ditan and Ubante confirmed the filing of their complaint against their employer, Lim, and that after some dialogue, the aforementioned employees executed an affidavit dated August 8, 2000 withdrawing their complaint. According to Ditan and Ubante, they met the respondent in Top Gun Billiards where the latter often played billiards. One day, respondent gave them a letter and asked them to sign it. Since they were busy at that time, they signed it without reading and understanding its contents. Their employer, Lim, asked what it was about and they told him that they were just made to sign a document without their understanding it. They added, they did not have any complaint against their employer. Despite such withdrawal, respondent still called Lim threatening the latter that he would pursue the case, have his establishment closed and he would be jailed if he did not come up with P20,000.00 as settlement. In the evening of August 14, 2000, respondent reiterated his demand for P20,000.00, again with the threat of closure of the billiard center and putting Lim in jail.

Complainant Lim said that after his meeting with respondent, he agreed to give the amount but did not fix any date when payment would be made, whereupon,

respondent gave notice that he would drop in at around 7:00 in the evening, on August 16, 2000, to pick up the money.

Aurora Cruz y Libunao, owner of the carinderia adjacent to Top Gun Billiards, stated in her sworn statement as well as court testimony that she met respondent when he ate in her carinderia. She recalled that the respondent told her that he would shut down the billiard business if the owner would not talk to him. She also recounted that on August 14, 2000, at around 8:30 p.m., she saw on the second floor of the pool house, the respondent and Lim talking. After a while, the respondent came down and passed by her carinderia. The respondent then informed her that he and Lim talked about the P20,000.00 which respondent would give to his alleged boss in Malacañang. During the hearing, she also recalled seeing Lim hand money to respondent who in turn put the cash in his attaché case and immediately thereafter, she saw three men arrest respondent.^[3]

Notably, almost nine months before the filing of his complaint, or on August 14, 2000, complainant Lim personally submitted a letter to the NBI requesting the NBI to investigate respondent Atty. Edilberto Barcelona.^[4] According to the NBI report, after due investigation, it decided to conduct an entrapment operation. On August 15, 2000, Special Investigator Marvin de Jemil, sent nine five hundred peso bills and five one hundred peso bills for fluorescent powder dusting to the NBI Forensic Chemistry Division. Further, the NBI reported that thru the NBI Identification and Records Division, it found no record of such person named Edilberto Barcelona.

The NBI report also stated that on August 16, 2000, Lim informed the NBI operatives that at around 7:00 p.m. respondent would drop by his pool house to collect the money. At around 6:30 p.m., the operatives went to the pool house and strategically positioned themselves and posed as pool players. At about 7:20 p.m., respondent arrived, sat on a plastic chair and talked to complainant Lim. At around 7:30 p.m., Lim handed the marked money to the respondent who, in turn, received it. While respondent was counting the money and about to place it inside his bag, he was immediately arrested. The respondent initially resisted and tried to create scandal but was later pacified.

The NBI averred that the respondent was informed of his constitutional rights and was brought to the NBI office where he was booked and fingerprinted. In his fingerprint chart, the respondent indicated that he was a government lawyer and assigned at the office of the Chief, Public Assistance Center, NLRC, Banawe, Quezon City. He showed his identification card. Later he was brought to the Forensic Chemistry Division for ultraviolet examination. The certification issued by Forensic Chemist Loren G. Janobas stated that there were "yellow fluorescent specks and smudges" on the back and palm of the left and right hand of the respondent. On August 17, 2000, the NBI turned over respondent to the City Prosecutor of Manila who eventually indicted him for robbery/extortion.^[5]

Complainant Richard Tan, owner of Tai Hing Glass Supply, a co-signee in the herein complaint, executed a sworn statement dated August 16, 2000. In it he alleged that he went to the Criminal Intelligence Division, Intelligence Service of the NBI to complain about respondent Barcelona. He said that sometime during the last week of July, respondent called him, introduced himself and informed him that one of his employees filed an illegal dismissal case against him. He remembered that before

respondent's call, he had suspended an employee, Bryan Tellen, for leaving his workplace without permission. Tellen received several warning letters from him regarding his misdemeanors. Tan remembered that Tellen once hinted that he knew someone in the Department of Labor, who turned out to be herein respondent, Atty. Barcelona. Before Tan sent his accountant, Ditas Guitierrez, to respondent's office to represent him, he told her to bring a copy of Tellen's suspension letter and to inform respondent that Tellen had not been dismissed. When Guitierrez returned, she told him that respondent wanted him to pay his employee. She added that respondent did not give her any copy of a formal complaint on the alleged illegal dismissal. After two days, according to Tan, respondent went to his office, showed him an identification card and gave him a handwritten calling card. Respondent told him to pay his employee P20,000.00 to P30,000.00, otherwise respondent would go on with the filing of the illegal dismissal case. When he said he did not have that kind of money, respondent lowered the amount to P15,000.00. Complainant Tan added that when he gave respondent the money, the latter promised to take care of the illegal dismissal complaint. On July 29, 2000, according to Tan, respondent came to see him again. Respondent appeared drunk and told Tan to go to the respondent's office because a problem regarding the case arose. Tan stated that before respondent left, respondent invited his employees to a game of billiards. Tan said he did not consent to the employees playing because they had work. On July 31, 2000, respondent went to him a third time and asked for an additional P10,000.00 allegedly for his employee, Tellen, since the P15,000.00 Tan gave earlier was for respondent only. After a few more visits by respondent, Tan finally told the respondent to show him the formal complaint and he would just get himself a lawyer.^[6]

The Joint Affidavit of Arrest, signed on August 17, 2000 by Agent Don R. Hernandez, SI Felix O. Senora and SI Marvin de Jemil, cited complainant Tan's allegations.^[7]

Respondent Atty. Barcelona filed his Comment^[8] on December 10, 2001, praying for the dismissal of the complaint against him. Respondent, in his defense, alleges that he normally played billiards at the Top Gun Billiard Center where he would drop by from his office before going to his residence; that when certain employees of the billiard center learned that he was a lawyer and Chief of the Public Assistance Center of the NLRC, they confided in him their grievance against their employer, Lim, for alleged violation of labor laws, there respondent gave them assistance; that with the proper complaint and required documentation accomplished, respondent's office scheduled the case for a dialogue-conference between the complaining workers and their employer; that on instigation and coercion of complainant Lim, respondent became a victim of theft, billiard hustling, swindling and syndicated gambling on August 9, 2000; that on or about August 9, 2000, respondent filed a complaint for theft of cellphone and pack of cigarettes, billiard hustling, syndicated gambling, and swindling against Lim and his three workers, eventually docketed as I.S. No. 38251 to 53.^[9]

Respondent's Comment narrated his version on how the money allegedly was given to him. According to the respondent, on August 16, 2000, at about 3 p.m., he received a phone call from complainant Lim informing him that Ian Gonvan,^[10] one of the accused in I.S. No. 38251, admitted taking his cellphone and was willing and ready to return it at around 7 p.m., at the Top Gun Billiard Center. It was the birthday of his daughter that was why he took the day off from office. At about 7:30

p.m., he arrived at the billiard hall and there found Lim with one of his complaining workers, fixing the lamp of one of the billiard tables. He did not see Gonvan within the premises so he sat and watched the billiard games going on while he waited. After about 15 minutes Lim sat beside him and told him that Gonvan could no longer return the cellphone and instead Gonvan entrusted Lim with the equivalent value in cash. According to respondent, Lim persistently whispered to him to accept and count the wad of paper money Lim pulled out. According to respondent, he consistently refused to touch the money and he insisted, "*Gusto ko munang makaharap ang sinasabi mong si Gumban*,"^[11] continuously refusing to accept, much less count, the offered wad of money. Respondent added that when Lim realized that he could not be prevailed upon to accept it, he placed and inserted the wad of money in the open side pocket of respondent's shoulder bag that respondent normally carried, again pleading to respondent that he should count the money. Respondent added that Lim's behavior was rude and intimidating so much so that respondent protested such rudeness. But respondent said while he was trying to retrieve the wad of money to throw it back to Lim, about five or seven burly men accosted respondent and handcuffed him over his vehement protestations.^[12]

On Tan's complaint, respondent declared that he never demanded nor received money from Tan, and Tan's accusations are but a product of the former's fertile imagination as leverage because he actively assisted a complaining worker of Tan.^[13] Respondent added that a formal labor complaint has been filed against Tan.^[14]

Eventually, we referred the complaint against Atty. Barcelona to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. Its report with recommendation is now before us. We shall now proceed to the merits of the complaint.

Respondent's version seeks to discredit the NBI report to the effect that respondent accepted the marked money which Lim handed to him. His version, however, fails to explain why he was found positive for yellow fluorescent specks and smudges in his dorsal and palmar aspects of the left and right hands by the Forensic Department of the NBI.

Respondent claims that he continuously refused to accept, much less count, the offered wad of money. Because of such refusal, according to respondent, Lim inserted the wad of money in respondent's shoulder bag's open pocket while complainant Lim was still pleading to count the wad of money.

Respondent alleges that the alleged bribery or extortion is a mere concoction of complainant and as leverage for the cases against Lim and Tan.

Based on the NBI report, this case appears to be an entrapment operation. Notably, Atty. Don Hernandez and his team of arresting officers confirm the entrapment operation against respondent on the basis of complainant Lim's call for NBI assistance.

While respondent alleges that complainant Lim merely concocted a charge of extortion against him in retaliation to a complaint for theft which he had filed, it may be noted that the complaint for theft was not directed against Lim but only against his workers who were accused by respondent. Hence, there appears to be no strong