



Republic of the Philippines
Supreme Court
Manila

Mis D C Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
NOV 13 2019

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

ADELFA PROPERTIES, INC. (now
FINE PROPERTIES, INC.),
Complainant,

A.C. No. 8608
[Formerly CBD Case No: 11-2907]

Present:

PERALTA, J., *Chairperson*,
LEONEN,*
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

- versus -

Promulgated:

ATTY. RESTITUTO S. MENDOZA,
Respondent.

October 16, 2019

Mis D C Batt

X-----X

RESOLUTION

PERALTA, J.:

Before us is a Complaint for Disbarment¹ filed by Adelfa Properties, Inc. (now Fine Properties, Inc.), as represented by Ma. Nalen Rosero-Galang, against respondent Atty. Restituto Mendoza (*Atty. Mendoza*), for allegedly violating the Lawyer's Oath and Canons 15, 17, 18, 21, and Rule 21.02 of the Code of Professional Responsibility (*CPR*).

The facts are as follows:

Adelfa Properties, Inc. (*complainant*) is a corporation duly organized and existing under the laws of the Republic of the Philippines, the majority stockholders of which are then Senator Manuel B. Villar, Jr. and his wife Senator Cynthia Villar. The corporation is primarily engaged in real estate development. Imperative to its business operations, Adelfa maintains a pool

* On wellness leave.
¹ *Rollo*, pp. 1-24.

of lawyers, each of which is assigned as in-house counsel to its affiliate companies. As in-house counsel, they provide legal advice and opinion not only to the company they are assigned to but also to other affiliate companies of Adelfa as need arises. They also represent the companies in court litigations and administrative proceedings, and handle legal issues confronting the companies.

In 2004, Brittany Corporation, an affiliate company of Adelfa, hired Atty. Mendoza as one of its in-house counsel. As in-house counsel, Atty. Mendoza, who practically holds an executive position, thus, apart from his legal expertise, must be able to blend well with company offices and other executives. However, much to the dismay and disappointment of Adelfa and its affiliates, Atty. Mendoza failed to blend effectively and efficiently with his co-in house counsels, officers and other executives. Complainant added that Atty. Mendoza's performance evaluation, particularly his ability to adapt to his work environment had been consistently low that he had to be transferred from one company to another, from one supervisor to another, in order to find him a suitable place in the company.

Thus, on February 1, 2007, Atty. Mendoza was transferred to Casa Regalia, Inc. However, due to his failure to work well again with his peers and superiors, he was again transferred and placed under the supervision of Atty. Edgardo Mendoza, and was tasked to handle non-core business or non-housing business collection and criminal cases.

Nevertheless, complainant averred that Atty. Mendoza's performance continued to disappoint the company, thus, in May 2009, Cynthia J. Javarez, Senior Officer of MB Villar Group of Companies, spoke with Atty. Mendoza about his poor annual performance evaluation. In her Affidavit² dated September 30, 2009, Javarez stated that after she informed Atty. Mendoza of the unfavorable assessment made by the senior officers, he threatened them and retorted, "*I will bring down the Company with me,*" and even brazenly claimed that he has information and documents against the company boss.

Complainant also alleged that on May 15, 2009, Atty. Mendoza approached another lawyer of one of the affiliated companies of Adelfa and showed him an affidavit which the former supposedly executed, containing an account of the alleged irregular and illegal acts and corrupt practices of the complainant and its affiliated companies. Atty. Mendoza allegedly told said lawyer that he would give said Affidavit to Senator Panfilo Lacson, unless Jerry M. Navarrete (*Navarrete*), one of the senior officers of one of Adelfa's affiliated companies, immediately meets with him to discuss his concerns.

² *Id.* at 27.

In an Affidavit³ executed by Navarrete, dated June 2, 2009, Navarrete stated that on May 20, 2009, he met Atty. Mendoza at Starbucks, 6750 Building, Ayala Center, Makati City. He averred that during the meeting, Atty. Mendoza told him that he took part in the preparation of documents in one of the illegal and irregular transactions of Adelfa and/or its affiliates, and that he had information and documents that are damaging to the political career of Senator Villar. Despite being reminded that Atty. Mendoza is bound by the attorney-client confidentiality rules, Atty. Mendoza continued to demand that he be paid ₱25,000,000.00, otherwise, he would surrender all the documents he had against Senator Villar to Senator Lacson.

Because complainant did not accede Atty. Mendoza's demands, the latter allegedly made a phone call to Engr. Momar Santos (*Engr. Santos*), one of Adelfa's officers. In his Affidavit⁴ dated June 2, 2009, Engr. Santos stated that Atty. Mendoza threatened that he will go all out against Senator Villar, and that he knew where he and his family resides should he release certain indecent photos of him.

Thus, due to breach of trust and confidence, complainant sent a notice of termination⁵ dated May 22, 2009 to Atty. Mendoza. In the said termination letter, complainant manifested they found substantial evidence that Atty. Mendoza has violated the company's core values and the pertinent provisions of the Labor Code. Complainant averred that Atty. Mendoza's threats against Engr. Santos and his family, his attempts to extort money, and his threats to expose incriminating information against Senator Villar constitute serious misconduct, gross and habitual neglect of duties, and willful breach of trust and confidence.

Complainant pointed out that in the illegal dismissal complaint which Atty. Mendoza filed against them, it is apparent that its filing was tainted by malice and caprice. In the said labor case, complainant averred that Atty. Mendoza asked for: (1) ₱73,433.54 per month as full backwages, (2) recovery of all salary increases due him, (3) performance bonuses given every six months of the year, (4) moral damages of ₱30,000,000.00, (5) exemplary damages of ₱30,000,000.00, and (6) attorney's fees equivalent to 15% of the total award.⁶

To aggravate the situation, complainant lamented that on April 20, 2010, Atty. Mendoza even had himself interviewed by ABS-CBN TV Patrol where he maliciously claimed that he was dismissed from employment

³ *Id.* at 28-29.

⁴ *Id.* at 31-32.

⁵ *Id.* at 33-34.

⁶ *Id.* at 94.

because he does not want to participate in the corrupt practices of the company. He also said therein that Senator Villar uses his influence and power to obtain favorable decisions in land disputes, when in truth, he had neither worked with Senator Villar nor the latter asked him to do work for him.

On April 22, 2010, in a press conference, Atty. Mendoza publicly declared that he will testify against Senator Villar on the alleged land grabbing issue committed by complainant and its affiliates.

Thus, complainant filed a disbarment complaint against Atty. Mendoza for violation of Canons 15, 17, 18 and 21, Rule 21.02 of the Code of Professional Responsibility and the lawyer's oath. Complainant also added that Atty. Mendoza also violated Canon 7, Rule 7.03, Canons 8 and 11, Rule 11.04 of the Code of Professional Responsibility for imputing that judges, justices and other public officers allow themselves to be bribed.

In a Resolution⁷ dated June 23, 2010, the Court resolved to require Atty. Mendoza to file his comment on the charges against him.

In his Comment⁸ dated September 22, 2010, Atty. Mendoza argued that contrary to the allegations against him, he actually upheld the lawyer's oath and Rule 1.01, Canon 1 of the Code of Professional Responsibility by refusing to engage in immoral, dishonest, unlawful and deceitful conduct. He claimed that his employment was terminated because he stood up for his principles to which he was branded as abrasive and not a team player.

Atty. Mendoza averred that he filed the labor complaint in order to seek justice for his illegal termination, and that he never wanted the media attention he got from filing his labor complaint against complainant. He, however, asserted the truth of his allegations of bribery of judges, justices and other government officials, as he claimed that he was privy to said incidents having worked as in-house counsel for complainant.

On November 15, 2010, the Court resolved to refer the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.⁹

In its Report and Recommendation dated March 26, 2013, Commissioner Romualdo A. Din, Jr., IBP-Commission on Bar Discipline (CBD), found Atty. Mendoza to have violated Canon 17 and Rule 21.02 of

⁷ *Id.* at 198.

⁸ *Id.* at 208-241.

⁹ *Id.* at 370.

Canon 21 of the Code of Professional Responsibility, and recommended that he be suspended for one (1) year from the practice of law.

In Resolution No. XX-2013-613 dated May 11, 2013, the IBP-Board of Governors resolved to adopt and approve with modification the report and recommendation of the Investigating Commissioner. Instead, it recommended that Atty. Mendoza be suspended from the practice of law for six (6) months.

RULING

We adopt the findings and recommendation of the IBP.

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting and confidential nature that is required by necessity and public interest.¹⁰ Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. The hypothesis is that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice.¹¹ Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.¹² One rule adopted to serve this purpose is the attorney-client privilege: an attorney is to keep inviolate his client's secrets or confidence and not to abuse them. Thus, the duty of a lawyer to preserve his client's secrets and confidence outlasts the termination of the attorney-client relationship, and continues even after the client's death.¹³

In sum, the Court elucidated on the factors essential to establish the existence of the said privilege, to wit:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.

Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss

¹⁰ *Regala v. Sandiganbayan*, 330 Phil. 678, 699 (1996), citing Agpalo, Ruben, *Legal Ethics*, 1992 ed., p. 136.

¹¹ *Hilado v. David*, 84 Phil. 569, 578 (1949), citing J. Wigmore's *Evidence* §§ 2285, 2290, 2291 (1923).

¹² *Id.* at 579.

¹³ *Mercado v. Atty. Vitriolo*, 498 Phil. 49, 57 (2005).

whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

x x x x

(2) The client made the communication in confidence.

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

Our jurisprudence on the matter rests on quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.

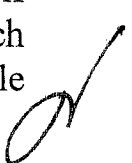
(3) The legal advice must be sought from the attorney in his professional capacity.

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.¹⁴

Applying all these rules in the instant case, we find that the evidence on record fails to substantiate complainant's allegations. We note that complainant did not even specify the alleged communication in confidence disclosed by respondent. Complainant merely claimed that the privilege was broken without averring any categorical and concrete allegations and evidence to support their claim.

The filing of the illegal dismissal case against complainant, and the disclosure of information in support thereof is not *per se* a violation of the rule on privileged communication because it was necessary in order to establish his cause of action against complainant. In sum, mere allegation, without any evidence as to the specific confidential information allegedly divulged by Atty. Mendoza, is difficult, if not impossible to determine if there was any violation of the rule on privileged communication. Such confidential information is a crucial link in establishing a breach of the rule

¹⁴ *Id.* at 58-60.



on privileged communication between attorney and client. It is not enough to merely assert the attorney-client privilege. The burden of proving that the privilege applies is placed upon the party asserting the privilege.

Further, our jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.¹⁵ In the recent case of *Reyes v. Atty. Nieva*,¹⁶ this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

In the instant case, a careful scrutiny of the evidence presented would reveal that the degree of proof indispensable in a disbarment case was not met. Complainant claims that Atty. Mendoza has been threatening and blackmailing them. However, the Court finds that the complaint, as well as the submitted affidavits, failed to discharge the necessary burden of proof as no other evidence was presented to substantiate their claims of extortion. The affidavits merely provided general statements and lacked evidence in support of their allegation of extortion.

However, the Court, nonetheless, does not find Atty. Mendoza totally absolved of fault. While We find the allegations of violation of rule on privileged communication and extortion to be unsubstantiated, the Court finds Atty. Mendoza's act of causing himself to be interviewed by the media, *i.e.*, ABS-CBN, thereby divulging information he has gathered in the course of his employment with complainant in the media to be violative of Rules 13.02, 21.01 and 21.02 of the CPR, which state:

Rule 13.02 - A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

CANON 21 - A LAWYER SHALL PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED.

Rule 21.01 - A lawyer shall not reveal the confidences or secrets of his client except;

- (a) When authorized by the client after acquainting him of the consequences of the disclosure;
- (b) When required by law;
- (c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

Rule 21.02 - A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same

¹⁵ *Concepcion v. Atty. Fandino, Jr.*, 389 Phil. 474, 480 (2000).
¹⁶ 794 Phil. 360, 379 (2016).

to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

Here, Atty. Mendoza's actuation of allowing himself to be interviewed by the media, thus, utilizing that forum to accuse his former employer of committing several illegal activities and divulging information which he secured in the course of his employment while he was the complainant's in-house counsel, no matter how general the allegations are, is an act which is tantamount to a clear breach of the trust and confidence of his employer.

Given the situation, the most decent and ethical thing which Atty. Mendoza should have done was instead lodge a proper complaint against complainant if he finds it necessary and allowed the judicial system to take its course. He should have exercised prudence and refrained from holding press conferences, issuing press statements, or giving interviews to the media on any matter or incident related to the issues subject of the controversy. The fact that he brought his issues to the arena of public opinion was reckless and punctuates his indiscretion.

This prohibition is founded on principles of public policy, good taste and, more importantly, upon necessity. In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care. No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice. It is for these reasons that we have described the attorney-client relationship as one of trust and confidence of the highest degree.¹⁷

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating the lawyer's oath and/or for breaching the ethics of the legal profession as embodied in the CPR, for the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.¹⁸

¹⁷

Pacaña, Jr. v. Atty. Pascual-Lopez, 611 Phil. 399, 409-410 (2009).

¹⁸

Jimenez v. Atty. Francisco, 749 Phil. 551, 574 (2014).

Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

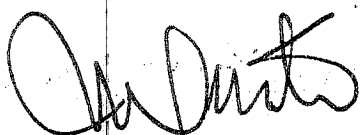
While the Court finds no violation of the rule on non-disclosure of privileged communication, the acts of Atty. Mendoza, in allowing himself to be interviewed by the media constitute gross misconduct in his office as attorney, for which a suspension from the practice of law is warranted.

WHEREFORE, the Court finds Atty. Restituto S. Mendoza **GUILTY** of violation of Rules 13.02, Canon 21, 21.01 and 21.02 of the Code of Professional Responsibility for which he is **SUSPENDED** from the practice of law for a period of six (6) months, effective upon receipt of this Resolution, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

Let a copy of this Resolution be entered into the records of Atty. Restituto S. Mendoza and furnished to the Office of the Clerk of Court, the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the Philippines, for their information and guidance.

Atty. Mendoza is **DIRECTED** to **INFORM** the Court of the date of his receipt of this Resolution so that the Court can determine the reckoning point when his suspension shall take effect.


SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On wellness leave
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRY JEAN PAUL B. INTING
Associate Justice

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