



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** which reads as follows:*

“A.C. No. 12618 [Formerly CBD Case No. 15-4579] (Herlita G. Gayo v. Atty. Bertini C. Causing). - Before us is a Complaint for Disbarment¹ filed by Herlita G. Gayo (*Gayo*) before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) seeking to disbar the respondent Atty. Bertini C. Causing (*Atty. Causing*), for allegedly violating the Lawyer's Oath and the Code of Professional Responsibility (*CPR*).

The facts are as follows.

Complainant maintains that on January 16, 2014, Atty. Causing acted maliciously and in gross bad faith in causing the annotation of Notice of *Lis Pendens* over Transfer Certificate of Title (*TCT*) Nos. 235639, 235640 and 235641 under the name of the complainant's community association, “Bo. Cupang Home Owners Association Inc” (*Bo. Cupang HOA*). According to the complainant, the said titles were already taken out via community mortgage program in favor of the National Housing Authority (*NHA*). The above parcels of land are subject of a community mortgage program with its two hundred nine (209) members as beneficiaries who are amortizing their individual lots mortgaged.

The individual lots are due for individual titling, but the project is being held back due to the existence of an annotation of notice of *lis pendens* on the mother titles, all of which would be reflected on the individual titles which would cost the members of the Bo. Cupang HOA reasonable sum of money. Hence, they are suffering damage and prejudice in that manner.

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¹ Rollo, Folder Vol. I, pp. 1-5.

Meanwhile, the respondent in his defense, denies the accusations of the complainant. He asserts that the *lis pendens* pertains to the annotation of the pendency of Civil Case No. 12-9645, entitled “*Spouses Canapi v. Bo. Cupang HOA, Inc.*,” which seeks the declaration of nullity of spurious or non-existent Original Certificate of Title (OCT) No. 114, the same non-existent title from where the TCT Nos. 235639, 235640, and 235641 were derived.

According to the respondent, it is but a right granted under Presidential Decree (PD) No. 1529 that a civil case affecting title and interest of parcels of land may be annotated at the back of the certificates of titles of these parcels. There is no dispute that the said civil case of the Spouses Canapi is seeking the declaration of nullity of OCT No. 114. With this, it is but a right of the Spouses Canapi to cause the annotation of the *lis pendens* of their case at the back of all the certificates of title derived from OCT No. 114, including TCT Nos. 235639, 235640, and 235641.

Nevertheless, the respondent asserts that it is always a matter of right of the Spouses Canapi to annotate the case at the back of the affected certificates of title and the remedies that they sought would not be complete without inscribing the *lis pendens* to inform the whole world and the alleged owners of the pendency of the action, to invite these other parties to intervene if they felt they had rights to be protected or to prompt them to protect their rights by filing a separate petition for cancellation of *lis pendens*.

Lastly, the respondent was in the position that as a lawyer, he must act if prompted by matters that need his personal actions as of the civil duty to defend the integrity of the registration systems. Thus, the respondent claims that the annotation complied with the Rules of Court and the law.

On June 23, 2015 a Mandatory Conference was held attended only by the complainant. Later on, an Order² was issued stating that the complainant submitted her Mandatory Conference Brief³ and giving the respondent an additional period of ten (10) days from receipt within which to submit his Mandatory Conference Brief. On July 13, 2016, the respondent filed his Mandatory Conference Brief.⁴ Another Mandatory Conference was called on July 14, 2016 which was again only attended by the complainant. Subsequently, an Order⁵

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² *Id.* at 269.

³ *Rollo*, Folder Vol. II, pp. 1-4.

⁴ *Id.* at 92-97.

⁵ *Id.* at 99.

was issued on July 14, 2016 directing the parties to submit their respective verified position papers within ten (10) days, attaching thereto their documentary exhibits and/or judicial affidavit/s of their witness/es, if any. The said Order also provides that the case shall be deemed submitted for report and recommendation after the submission of the position papers.

On July 20, 2016, the complainant submitted her Position Paper,⁶ while the respondent filed his Position Paper⁷ on August 3, 2016.

Upon a thorough evaluation of the evidence presented by the parties in their respective pleadings, the IBP-CBD submitted its Report and Recommendation⁸ dated September 15, 2016, dismissing the complaint of Gayo for lack of merit. Thus, the IBP Investigating Commissioner found that there was no violation of the lawyer's oath and CPR on the part of Atty. Causing. This ruling is based on the fact that Atty. Causing's annotation of the *lis pendens* on behalf of his client is within the bounds of reason and fair play and after a careful study of the facts and law.

In a Resolution⁹ dated November 7, 2018, the IBP Board of Governors (*IBP-BOG*) resolved to adopt the aforesaid Report and Recommendation dismissing the complaint.

On August 28, 2019, the IBP-CBD transmitted to the Court the Notices of Resolution and records of the case for appropriate action.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the lawyer's oath and the Code of Professional Responsibility.

Our Ruling

The Court resolves to adopt the findings of fact of the IBP.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of

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⁶ *Id.* at 100-104.

⁷ *Id.* at 180-187.

⁸ *Rollo*, Folder Vol. III, pp. 4-6.

⁹ *Id.* at 2.

proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.¹⁰ In the present case, there is no sufficient, clear and convincing evidence to hold Atty. Causing administratively liable for violating the Code of Conduct for the annotation of the notice of *lis pendens* on behalf of his client to be liable for disbarment.

Malice connotes ill will or spite, and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.¹¹ Bad faith is never presumed. It is a conclusion to be drawn from facts. Its determination is thus a question of fact and is evidentiary.¹² Here, there is no evidence to show that Atty. Causing's act of annotation of *lis pendens* to the subject TCTs were coupled with bad faith, malice, or ill-will. As a lawyer, Atty. Causing is duty-bound to protect the interest of his clients by exercising due diligence through annotation of notice of *lis pendens*. It also supports the Spouses Canapi's theory of the case that the subject certificate of title in the name of Bo. Cupang HOA is null and void, because it came from OCT No. 114 that was never issued and has never existed.

Further, it is an official function of any lawyer to prepare a complaint for his client, file the same in court or *quasi*-judicial bodies, and to file *lis pendens* that is a right given to the plaintiff under P.D. 1529.

Moreover, in this case, the Investigating Commissioner properly found that respondent did not commit bad faith in the annotation of notice of *lis pendens* in the subject certificate of title. As correctly pointed out by the IBP-CBD, respondent Atty. Causing was able to show that in rendering services to his client, he served only within the bounds of the law. He employed fair and honest means to attain the lawful objectives of his client.

It must be stressed anew that lawyers enjoy the legal presumption that they are innocent of the charges against them until proven otherwise — as officers of the court, they are presumed to have performed their duties in accordance with their oath.¹³ While the

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¹⁰ *Cabas v. Atty. Sususco, et al.*, 787 Phil. 167, 174 (2016).

¹¹ *Go v. Cordero*, 634 Phil. 69, 95 (2010).

¹² *El Grande Aguirre Commerce and Trade Organization v. Frias*, A.C. No. 11888 (Notice), March 7, 2018.

¹³ *Zara v. Joyas*, A.C. No. 10994 (Resolution), June 10, 2019.

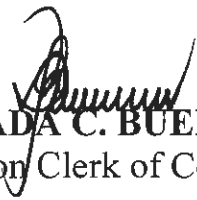
Court will not avoid its responsibility in meting out the proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, the Court will not wield its axe against those the accusations against whom are not indubitably proven.¹⁴

Accordingly, in the absence of a clear and convincing evidence, the complaint for disbarment should be dismissed.

WHEREFORE, the Complaint for Disbarment against Atty. Bertini C. Causing is hereby **DISMISSED** for lack of merit.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *2/10*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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¹⁴ *Lanuza v. Atty. Magsalin III, et al.*, 749 Phil. 104, 112 (2014).