



Republic of the Philippines
Supreme Court
Manila

EN BANC

In Re: G.R. No. 157659
“ELIGIO P. MALLARI v.
GOVERNMENT SERVICE
INSURANCE SYSTEM and the
PROVINCIAL SHERIFF OF
PAMPANGA.”

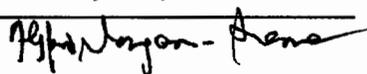
A.C. No. 11111

Present:

SERENO, C.J.,*
CARPIO,
VELASCO, JR.,*
LEONARDO-DE CASTRO,*
PERALTA,*
BERSAMIN,*
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,*
REYES, JR.,* and
GISMUNDO, JJ.

Promulgated:

January 10, 2018



X -----X

DECISION

JARDELEZA, J.:

This is an administrative case involving a member of the bar. In our Decision in G.R. No. 157659 entitled *Eligio P. Mallari v. Government Service Insurance System and the Provincial Sheriff of Pampanga*¹ promulgated on January 25, 2010, this Court directed the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP-CBD) to investigate respondent Atty. Eligio P. Mallari (respondent) for what appear to be: (1) his deliberate disregard of the Rules of Court and jurisprudence pertinent to the

* No part.

¹ 611 SCRA 32; *Rollo*, pp. 4-22. Penned by Associate Justice Lucas P. Bersamin, with the concurrence of Chief Justice Reynato S. Puno and Associate Justices Conchita Carpio Morales, Teresita J. Leonardo-De Castro, and Martin S. Villarama, Jr.



issuance and implementation of the writ of possession under Act No. 3135,² as amended; and (2) his witting violations of the Lawyer's Oath and the Code of Professional Responsibility (CPR).³

The facts leading to this disciplinary action, as found by this Court in G.R. No. 157659, are as follows:

In 1968, respondent obtained two loans from the Government Service Insurance System (GSIS) in the total amount of ₱34,000. These loans were secured by mortgages over two parcels of land registered under his and his wife's names. Eventually, respondent was unable to meet his obligations to the GSIS, which prompted the latter to remind him to settle his account.⁴

On March 21, 1984, the GSIS applied for the extrajudicial foreclosure of the mortgage due to respondent's failure to settle his account. Respondent, however, was able to stall this by requesting for a final computation of his outstanding account and persuading the Sheriff to hold the publication of the foreclosure notice in abeyance. On December 13, 1984, the GSIS responded to his request and rendered a detailed explanation of the account. On May 30, 1985, it sent another updated statement of account. For failing to settle his account, the GSIS finally commenced extrajudicial foreclosure proceedings on respondent's mortgaged properties on July 21, 1986.⁵

On August 22, 1986, respondent filed a complaint for injunction with application for preliminary injunction against the GSIS and the Provincial Sheriff of Pampanga in Branch 44 of the Regional Trial Court (RTC), in San Fernando, Pampanga. This was docketed as Civil Case No. 7802.⁶ The RTC ultimately decided Civil Case No. 7802 in his favor. Upon appeal by the GSIS, the CA reversed the RTC on March 27, 1996. This Court, in G.R. No. 124468, denied respondent's petition for review on *certiorari* on September 16, 1996, as well as his motion for reconsideration on January 15, 1997. As a result, the CA Decision dated March 27, 1996 became final and executory, rendering unassailable the extrajudicial foreclosure and auction sale held on September 22, 1986, and the issuance of titles in the name of the GSIS.⁷

On September 2, 1999, the GSIS filed an *ex parte* motion for execution and/or a writ of possession. The RTC issued a writ of execution *cum* writ of possession on October 21, 1999, ordering the Sheriff to place the GSIS in possession of the properties.⁸ The Sheriff failed to serve the writ, however, partly because of respondent's request for an extension of time

² An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

³ *Mallari v. Government Service Insurance System*, *supra* at 55.

⁴ *Id.* at 36.

⁵ *Id.*

⁶ *Id.* at 36-37.

⁷ *Id.* at 37.

⁸ *Id.*

within which to vacate the properties. Respondent, however, instead filed a motion for reconsideration and/or to quash the writ of execution on March 27, 2000.⁹

Respondent also filed a case for consignment with a prayer for writ of preliminary injunction or temporary restraining order against the GSIS and the provincial Sheriff in the RTC in San Fernando, Pampanga. This case, docketed as Civil Case No. 12053,¹⁰ was dismissed by the RTC on November 10, 2000 on the ground of *res judicata*, impelling respondent to appeal the dismissal to the CA.¹¹

Meanwhile, in Civil Case No. 7802, respondent filed: (1) a motion dated April 5, 2000 to hold the GSIS, *et al.* in contempt of court for painting the fence of the properties during the pendency of his motion for reconsideration and/or to quash the writ of execution; and (2) a motion dated April 17, 2000 to hold the GSIS and its local manager Arnulfo B. Cardenas in contempt of court for ordering the electric company to cut off electric services to the properties during the pendency of his motion for reconsideration and/or quash the writ of execution.¹²

Eventually, Civil Case No. 7802 was re-assigned to Branch 48, whose Presiding Judge denied the motions for contempt of court on July 30, 2001 and directed the Branch Clerk of Court to cause the re-implementation of the writ of execution *cum* writ of possession dated October 21, 1999. Respondent sought reconsideration but this was denied on February 11, 2002.¹³

Respondent assailed the orders denying his motions for contempt, the order causing the re-implementation of the writ of execution *cum* writ of possession, and the denial of his motion for reconsideration with the CA. The CA, however, denied his petition for *certiorari*.¹⁴

Respondent brought the matter before us in G.R. No. 157659, where we affirmed the CA's Decision. We held that the issuance of the writ of possession in an extrajudicial foreclosure sale is purely ministerial.¹⁵ We further stressed that respondent, as a lawyer, should have known that, as a *non-redeeming* mortgagor, he had no more right to challenge the issuance of the writ of execution *cum* writ of possession upon the *ex parte* application of the GSIS, especially after the consolidation of ownership of the properties in the GSIS.¹⁶ Thus, his actions can only be tainted by bad faith.¹⁷ This Court

⁹ *Id.* at 38.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 39.

¹⁴ *Id.*

¹⁵ *Id.* at 43.

¹⁶ *Id.* at 50.

¹⁷ *Id.*

further agreed with the CA's observation that the petition before it is "part of the dilatory tactics x x x to stall the execution of a final and executory decision in Civil Case No. 7802 which has already been resolved with finality by no less than the highest tribunal of the land."¹⁸ Thus, we deemed it proper to direct the IBP-CBD to conduct an investigation on respondent, the pertinent portion of which we quote:

The Committee on Bar Discipline of the Integrated Bar of the Philippines is directed to investigate the petitioner for what appear to be (a) his deliberate disregard of the *Rules of Court* and jurisprudence pertinent to the issuance and implementation of the writ of possession under Act No. 3135, as amended; and (b) his witting violations of the Lawyer's Oath and the *Code of Professional Responsibility*.

SO ORDERED.¹⁹ (Italics in the original.)

On February 17, 2010, the IBP-CBD notified respondent of the Decision in G.R. No. 157659 and required him to file his verified answer.²⁰

In the meantime, respondent's motion for reconsideration of the Decision in G.R. No. 157659 was denied with finality by this Court on April 28, 2010.²¹

In his answer to the disbarment complaint,²² respondent claims that he did not deliberately disregard the Rules of Court and jurisprudence relative to the issuance and implementation of the writ of possession, as well as the Lawyer's Oath and the CPR.²³ He maintains that he is still the owner of the unlawfully foreclosed properties because: (1) the GSIS' action for mortgage has prescribed since more than 10 years had lapsed since the contracting of the obligations;²⁴ (2) he still has in his favor the one year right of redemption, to be counted from February 22, 1997, the finality of the decision in Civil Case No. 7802;²⁵ (3) he preserved his right of redemption by effecting a valid tender of payment and consignation to the GSIS on May 28, 1997;²⁶ and (4) due to GSIS' refusal to receive his payment, he filed the case for consignation (Civil Case No. 12053) on March 27, 2000.²⁷ Hence, respondent concludes that, as owner of the properties, he has the right to exclude any person from its enjoyment and disposal and may use such reasonably necessary force as allowed under Article 429 of the Civil Code.²⁸ In any case, he asserts that all the pleadings in this case were signed by his

¹⁸ *Id.* at 53.

¹⁹ *Id.* at 55.

²⁰ *Rollo*, p. 209.

²¹ *Id.* at 551-552.

²² *Id.* at 125-208.

²³ *Id.* at 147.

²⁴ *Id.* at 180.

²⁵ *Id.* at 159.

²⁶ *Id.* at 182.

²⁷ *Id.* at 81, 181.

²⁸ *Id.* at 183-184.

lawyer, Atty. Andres Ocampo, except for two: (1) reply to GSIS dated September 11, 2003; and (2) petition for review in G.R. No. 157659.²⁹

The IBP-CBD, in their Report and Recommendation,³⁰ found that the means employed by respondent are dilatory moves to delay the execution of the judgment in favor of the GSIS. In the process, he violated his Lawyer's Oath and Rule 10.3, Canon 10 of the CPR. The IBP-CBD thus recommended that respondent be meted a penalty of suspension from the practice of law for at least one year.³¹

In its Resolution No. XX-2013-513,³² the IBP Board of Governors adopted the findings and recommendation of IBP Commissioner Oliver A. Cachapero. It also denied respondent's subsequent motion for reconsideration in Resolution No. XXI-2015-368.³³

These Resolutions, together with the records of the case, were transmitted to this Court for final action, pursuant to Rule 139-B, Section 12(b).³⁴

We adopt the findings of the IBP Board of Governors on respondent's unethical conduct, but modify the penalty in accord with recent jurisprudence.

A lawyer must never be blinded by the cause of his client at the expense of justice, even if the latter turned out to be himself. He must never overlook that as officer of the court, he is primarily called upon to assist in the administration of justice.³⁵ Often designated as vanguards of our legal system, lawyers are called upon to protect and uphold truth and the rule of law.³⁶ They are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.³⁷

In this case, the judgment in favor of the GSIS concerning the validity of the extrajudicial foreclosure proceedings had long become final and executory in G.R. No. 124468. Despite this, respondent, with the single purpose of delaying the execution of the judgment by the winning party, took the following series of actions which effectively obstructed the execution of a final and executory judgment: (1) he caused the Sheriff to fail in his service of the writ of possession upon his representation that the GSIS had agreed to his request for extension of time to vacate the premises; yet, he did not vacate the premises and instead filed a motion for reconsideration

²⁹ *Id.* at 190-192.

³⁰ *Id.* at 638-644.

³¹ *Id.* at 644.

³² *Id.* at 637.

³³ *Id.* at 821.

³⁴ *Id.* at 820.

³⁵ See *Plus Builders, Inc. v. Revilla, Jr.*, A.C. No. 7056, September 13, 2006, 501 SCRA 615, 623.

³⁶ *Id.* at 623-624.

³⁷ *Id.* at 624.

and/or to quash the writ of execution; (2) he commenced a second case against the GSIS and the Provincial Sheriff before the RTC in San Fernando, Pampanga for consignment coupled with a prayer for a writ of preliminary injunction or temporary restraining order, knowing fully well that his right to redeem has expired; and (3) he went on to file a motion for contempt against the GSIS, *et al.* for painting the fence of the property, and for ordering the electric company to cut off electric service, despite knowledge that the GSIS' ownership over the properties has been upheld.

This Court, unable to turn a blind eye to the maneuverings employed by respondent, previously observed:

Verily, the petitioner wittingly adopted his afore-described worthless and vexatious legal maneuvers for no other purpose except to delay the full enforcement of the writ of possession, despite knowing, being himself a lawyer, that as a non-redeeming mortgagor he could no longer impugn both the extrajudicial foreclosure and the *ex parte* issuance of the *writ of execution cum writ of possession*; and that the enforcement of the duly-issued writ of possession could not be delayed. He thus deliberately abused court procedures and processes, in order to enable himself to obstruct and stifle the fair and quick administration of justice in favor of mortgagee and purchaser GSIS.

His conduct contravened Rule 10.03, Canon 10 of the *Code of Professional Responsibility*, by which he was enjoined as a lawyer to "observe the rules of procedure and xxx not [to] misuse them to defeat the ends of justice." By his dilatory moves, he further breached and dishonored his Lawyer's Oath, particularly:

xxx I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients xxx

We stress that the petitioner's being the party litigant himself did not give him the license to resort to dilatory moves. His zeal to defend whatever rights he then believed he had and to promote his perceived remaining interests in the property already lawful transferred to GSIS should not exceed the bounds of the law, for he remained *at all times* an officer of the Court burdened to conduct himself "with all good fidelity as well to the courts as to [his] clients." His true obligation as a lawyer should not be warped by any misplaced sense of his rights and interests as a litigant, because he was, above all, bound not to unduly delay a case, not to impede the execution of a judgment, and not to misuse Court processes. Consequently, he must be made to



account for his *misconduct* as a lawyer.³⁸ (Italics in the original, citations omitted.)

Notably, when asked to answer the administrative charges against him, respondent does not lament the actions he has taken. Rather, he justifies them by insisting that this Court has erred in its decisions in G.R. No. 124468 and G.R. No. 157659—decisions which have long attained finality. He again bombards the Court with arguments against the validity of the extrajudicial foreclosure proceedings in this disciplinary case knowing fully well, he being a member of the bar, that final and executory decisions may no longer be disturbed. The same holds true with regard to respondent's reliance on Article 429 of the Civil Code. His refuge, if at all, under the article is tainted with bad faith since he knew that the issue on ownership of the properties has long been settled in G.R. No. 124468. Such action on his part only affirms his misplaced zealousness and malicious intent to reopen the case in the hopes of gaining a favorable judgment. He demonstrates his propensity to abuse and misuse court processes to the detriment of the winning party and ultimately, the administration of justice. As such, he violated Canon 10 and Rule 10.03 of the CPR:

Canon 10 – A lawyer owes candor, fairness and good faith to the court.

x x x x

Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Respondent owes good faith, fairness and candor to the court. By arguing a case that has already been rejected repeatedly, he abused his right of recourse to the courts.³⁹ His acts of not conducting himself “to the best of his knowledge and discretion with all good fidelity to the courts” constitute serious transgression of his professional oath.

Moreover, the filing of another action concerning the same subject matter, in violation of the doctrine of *res judicata*, runs contrary to Canon 12⁴⁰ of the CPR, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.⁴¹ Respondent's act of filing Civil Case No. 12053 (which was dismissed by the RTC on the ground of *res judicata*) further indicates his proclivity to muddle the issues of the case in order to delay the execution of judgment in Civil Case No. 7802. By his conduct, respondent violated not only the lawyer's mandate “to delay no man for money or malice,” but also Rules 12.02 and 12.04 of the CPR:

³⁸ *Mallari v. Government Service Insurance System*, *supra* note 1 at 53-54.

³⁹ *Plus Builders, Inc. v. Revilla, Jr.*, *supra* note 35 at 624.

⁴⁰ Canon 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

⁴¹ *Alonso v. Relamida, Jr.*, A.C. No. 8481, August 3, 2010, 626 SCRA 281, 290.



Rule 12.02 – A lawyer shall not file multiple actions arising from the same cause.

x x x x

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

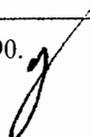
Respondent must be reminded that he is not merely the litigant in his case. He is also his own counsel and an officer of the court with a duty to the truth and the administration of justice:

A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.⁴² (Citation omitted.)

Respondent cannot escape liability by claiming that it was his counsel, Atty. Ocampo, who signed most of the pleadings. We note that respondent admits that he filed the petition for review in G.R. No. 157659 before us. By doing so, he ratified the previous actions taken by his counsel. For otherwise, if he did not in fact sanction these deeds, he would not have elevated before us the denial of the motions for contempt, the order causing the re-implementation of the writ of execution *cum* writ of possession, and the denial of his motion for reconsideration. This behavior on his part reveals that the actions undertaken by his counsel were under his strict instructions, or at the very least, with his consent. For having done so, respondent also breached his oath as an officer of this Court not only by filing groundless suits, but also by instructing another member of the bar to do so.

In sum, we adopt the recommendation of the IBP-CBD holding respondent guilty of violating the Lawyer's Oath; Canons 10 and 12; and Rules 10.03, 12.02, and 12.04 of the CPR. However, we deem it proper to

⁴² *Id.* at 289-290.



increase the penalty of suspension from the practice of law from one (1) year to two (2) years.⁴³

WHEREFORE, premises considered, respondent Atty. Eligio P. Mallari is hereby found **GUILTY** of violating the Lawyer’s Oath; Canons 10 and 12; and Rules 10.03, 12.02, and 12.04 of the Code of Professional Responsibility. He is hereby suspended from the practice of law for a period of two (2) years effective upon receipt of a copy of this Decision.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

(No part)
MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice

(No part)
PRESBITERO J. VELASCO, JR.
Associate Justice

(No part)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(No part)
DIOSDADO M. PERALTA
Associate Justice

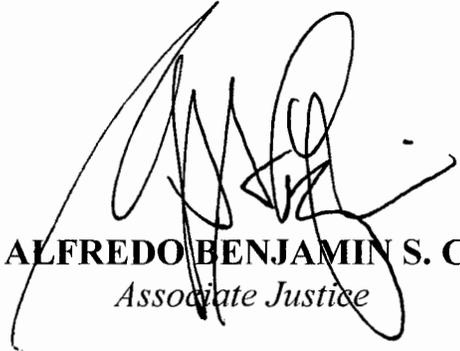
(No part)
LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M. V. F. LEONEN
Associate Justice

⁴³ *Salabao v. Villaruel, Jr.*, A.C. No. 8084, August 24, 2015, 768 SCRA 1, 13; *Avida Land Corporation (formerly Laguna Properties Holdings, Inc.) v. Argosino*, A.C. No. 7437, August 17, 2016, 800 SCRA 510, 523-524, citing *Saladaga v. Astorga*, A.C. No. 4697, November 25, 2014, 741 SCRA 603.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

(No part)
NOEL GIMENEZ TIJAM
Associate Justice

(No part)
ANDRES B. REYES, JR.
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

CERTIFIED XI ROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT