



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HOME
CORPORATION,

GUARANTY

A.C. No. 13131

Complainant,

Present:

PERLAS-BERNABE, S.A.J.

Chairperson,

HERNANDO,

ZALAMEDA,

ROSARIO, and

MARQUEZ, JJ.

- versus -

Promulgated:

FEB 23 2022

ATTY. LAMBERTO T.
TAGAYUNA, ATTY. JOSE A.
GANGAN, ATTY. ELMAR A.
PANOPIO, and ATTY. RENATO
DE PANO, JR.,

Respondents.

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DECISION

HERNANDO, J.:

This administrative case arose from a complaint for disbarment¹ filed by complainant Home Guaranty Corporation (HGC) against respondents Atty. Lamberto T. Tagayuna (Atty. Tagayuna), Atty. Jose A. Gangan (Atty. Gangan), Atty. Elmar A. Panopio (Atty. Panopio), and Atty. Renato De Pano, Jr. (Atty. De Pano) (collectively, respondents) for violation of Rules 15.01, 15.03, and 15.08 of Canon 15, and Rules 16.01 and 16.03 of Canon 16, of the Code of Professional Responsibility (CPR).²

¹ *Rollo*, vol. 1, pp. 1-13.

² The Code of Professional Responsibility (1988).

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The Factual Antecedents:

On November 5, 2015, HGC filed a complaint for disbarment before the Integrated Bar of the Philippines (IBP), alleging that respondents violated the conflict of interest rule as provided in Canon 15, as well as for failure and refusal to account for the funds and properties of their client HGC when due or upon demand as provided in Canon 16.³ Respondents are partners of Soliven, Tagayuna, Gangan, Panopio & De Pano Law Firm (Law Firm).⁴

HGC, a government-owned and controlled corporation, claimed that it had a large volume of non-moving, inactive, and past due receivables.⁵ This necessitated the procurement of services of an external collection agency to improve its collection efficiency.⁶ HGC thus engaged E.S.P. Collection Agency (ESP), which was represented by Atty. Panopio jointly with the Law Firm.⁷ In 2003, HGC and ESP jointly with the Law Firm entered into a Collection Retainership Agreement, where HGC endorsed accounts for judicial and extrajudicial collection.⁸ Consequently, HGC provided ESP and the Law Firm the necessary documents for collection and litigation purposes.⁹ HGC claimed that the Collection Retainership Agreement was renewed annually for several years, until HGC and ESP agreed to terminate their contractual relationship on October 23, 2013.¹⁰

HGC claimed that respondents refused to return the documents, specifically 53 owner's duplicate copies of transfer certificates of title and other various documents, endorsed to the Law Firm in view of the termination of the Collection Retainership Agreement.¹¹ HGC sent several demand letters in 2014 and 2015.¹²

On the allegation of conflict of interest, HGC claimed that Atty. Tagayuna (one of the partners of ESP and the Law Firm) was also the president of Blue Star Construction and Development Corporation (BSCDC).¹³ HGC averred that in 2012, BSCDC through Atty. Tagayuna initiated an arbitration case against it

³ *Rollo*, vol. II, unpaginated (Extended Resolution, p. 2).

⁴ *Id.* (Id.).

⁵ *Id.* (Id. at 3).

⁶ *Id.* (Id.).

⁷ *Id.* (Id.).

⁸ *Id.* (Id.).

⁹ *Id.* (Id.).

¹⁰ *Id.* (Id.).

¹¹ *Rollo* (vol. I), pp. 5-6. *Rollo*, (vol. II), pp. 81-82.

¹² *Id.*

¹³ *Rollo* (vol. II), unpaginated (Extended Resolution, p. 3).

before the Construction Industry Arbitration Commission while the Collection Retainership Agreement with ESP was still subsisting.¹⁴

For their defense, respondents Atty. Tagayuna and Atty. Panopio claimed that the Collection Retainership Agreement was never extended until 2013; the contract expired on December 31, 2011 and was no longer renewed.¹⁵ Atty. Tagayuna admitted that he was an officer of BSCDC but not its counsel when the arbitration case was filed.¹⁶ He likewise insisted that the Collection Retainership Agreement was already expired when BSCDC filed the arbitration case against HGC¹⁷ on May 16, 2012.¹⁸ Had there been any communication between HGC and ESP and the Law Firm beyond 2011, it was purely for the winding up of the obligations of the parties.¹⁹

Respondents added that HGC still owed ESP and the Law Firm the sum of ₱846,212.39, for which the Law Firm exercised its retaining lien against the remaining records in custody.²⁰ They also add that these documents were already returned to HGC save for a few unaccounted ones.²¹ There was no intention of withholding the remaining records of HGC, except on the ground of exercising retaining lien by reason of non-payment of legal fees.²²

During the mandatory conference before the IBP, HGC manifested that it will no longer pursue the disciplinary case as against respondents Atty. De Pano and Atty. Gangan.²³ Atty. De Pano was no longer connected with the Law Firm long before the filing of the instant complaint, as evidenced by his resignation letter tendered on December 8, 2011.²⁴ Atty. Gangan, on the other hand, passed away in October 23, 2016 while in Japan.²⁵

Report and Recommendation of the Integrated Bar of the Philippines:

In its December 23, 2019 Report and Recommendation,²⁶ the IBP Commission on Bar Discipline (CBD) recommended that respondents Atty.

¹⁴ Id. (Id.). See *rollo* (vol. I), p. 3.

¹⁵ Id. (Report and Recommendation, pp. 3-4).

¹⁶ Id. (Id. at 4).

¹⁷ Id. (Id.).

¹⁸ Id. (Extended Resolution, p. 7). *Rollo* (vol. I), pp. 56-65.

¹⁹ Id. (Report and Recommendation, p. 4).

²⁰ Id. (Id.).

²¹ Id. at 282-283.

²² Id. (Report and Recommendation, p. 6).

²³ Id. (Id. at 7).

²⁴ Id. (Id.).

²⁵ Id. (Id.).

²⁶ Id. Penned by Investigating Commissioner Rogelio N. Wong.

Tagayuna and Atty. Panopio be suspended from the practice of law for a period of six months. It found that they violated the conflict of interest rule when they represented BSCDC in the filing of an arbitration case against HGC.²⁷ The CBD stated that even assuming that the contractual relationship was already terminated at the time of filing of the case, it did not open the floodgates for the lawyers to perform overt acts against a former client.²⁸ As to the charge of unlawful retainer of client's properties and documents, the CBD held that the Law Firm had legal grounds to withhold certain documents of HGC in the exercise of retaining lien.²⁹

The CBD further recommended the dismissal of the complaints against Atty. De Pano, in view of his resignation from the Law Firm on December 8, 2011, and Atty. Gangan, in view of his death.³⁰

The dispositive portion of the Report and Recommendation reads:

WHEREFORE, in view of the foregoing, it is respectfully recommended that the respondents **ATTY. LAMBERTO T. TAGAYUNA AND ATTY. ELMAR A. PANOPIO**, be suspended for six (6) months from the practice of law, with a stern warning that repetition or breach of [L]awyer's [O]ath and the Code of Professional Responsibility (CPR) among others, shall be dealt with severely.

The Complaints against respondents [sic] **ATTY. JOSE A. GANGAN**, in view of his death be **DISMISSED**; and the complaints against respondent **ATTY. RENATO DE PANO, JR.** be dismissed for lack of merit.

Respectfully submitted.³¹

However, in its September 8, 2020 Extended Resolution,³² the IBP Board of Governors (BOG) resolved to set aside the Report and Recommendation of the CBD insofar as the suspension of respondents Atty. Tagayuna and Atty. Panopio. The BOG recommended the dismissal of the complaint as to them, as well as affirmed the dismissal of the complaint as to respondents Atty. De Pano and Atty. Gangan.

The BOG ruled that respondents are not guilty of violating the conflict of interest rule. Evidence show that the Law Firm was retained as counsel only until December 31, 2011, while the arbitration case was initiated in May 2012.³³ Thus, the Law Firm was no longer HGC's counsel when the case was initiated.

²⁷ Id. (Report and Recommendation, pp. 9-10).

²⁸ Id. (Id.).

²⁹ Id. (Id. at 10).

³⁰ Id. (Id. at 11; see Extended Resolution, pp. 3-4).

³¹ Id. (Id.).

³² Id. Penned by Director for Bar Discipline Randall C. Tabayoyong.

³³ Id. (Extended Resolution, pp. 7-8).

Further, the Law Firm did not act as BSCDC's counsel in the arbitration case; Atty. Tagayuna signed as president for purposes of verification of the initiatory pleading.³⁴ There is also no evidence that respondents participated as HGC's counsel in the transactions pertaining to the arbitration case.³⁵ The BOG likewise cleared respondents of the charge on unlawful withholding of documents; it found that respondents already returned the demanded documents to HGC.³⁶

The dispositive portion of the BOG's Extended Resolution reads:

WHEREFORE, premises considered, the Board RESOLVED to APPROVE and ADOPT, as it hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case to **DISMISS** the case against Atty. Jose A. Gangan and Atty. Renato De Pano Jr., after finding the recommendation to be fully supported by the evidence on record and the applicable laws and rules.

RESOLVED FURTHER to REVERSE and SET aside, as it hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case insofar as it held Attys. L[a]mberto T. Tagayuna and Elmar A. Panopio liable for conflict of interest and, considering that no unethical conduct were committed by respondents Atty. Lamberto T. Tagayuna and Atty. Elmar Panopio, the case is hereby recommended to be **DISMISSED**.³⁷

Our Ruling

The Court partially adopts the findings and recommendation of the IBP BOG. The administrative complaint against respondents Atty. Gangan and Atty. De Pano is dismissed. However, the administrative complaint against respondents Atty. Tagayuna and Atty. Panopio is partly meritorious; the Court thus imposes the penalty of reprimand.

On the violation of the conflict of interest rule, HGC claims that respondents violated the rule as espoused in the following provisions of the CPR:

CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

Rule 15.01 A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

³⁴ Id. (Id. at 8).

³⁵ Id. (Id.).

³⁶ Id. (Extended Resolution, p. 4).

³⁷ Id. (Id. at 10).

x x x x

Rule 15.03 A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

x x x x

Rule 15.08 A lawyer who is engaged in another profession or occupation concurrently with the practice of law shall make clear to his client whether he is acting as a lawyer or in another capacity.

In one case, the Court summarized:

Simply put, in determining whether a lawyer is guilty of violating the rules on conflict of interest under the CPR, it is essential to determine whether: (1) “a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client;” (2) “the acceptance of a new relation would prevent the full discharge of a lawyer’s duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty;” and (3) “a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.”³⁸

The Court finds that respondents did not violate the conflict of interest rule under the three tests.

Under the first test, there is conflict of interest if the lawyer represents both opposing parties in an issue or claim. Stated differently, “if a lawyer’s argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.”³⁹

The Court finds that there was no violation under the parameters of this test. Respondents did not represent conflicting interests—HGC’s and BSCDC’s interests—here. As found by the IBP, the Law Firm did not represent BSCDC as counsel in the arbitration case. The arbitration complaint was signed by Atty. Ruben L. Almadro (Atty. Almadro) as BSCDC’s counsel.⁴⁰ Atty. Almadro is not part or related to the Law Firm. On the other hand, Atty. Tagayuna merely signed as president to verify the complaint.⁴¹ Further, evidence show that the Law Firm and ESP were engaged by HGC for collection purposes only; as determined by the IBP, there is no proof that the Law Firm handled matters that were related to the arbitration case.⁴² Also, it was established that the Law Firm was no longer retained as counsel at the time of the filing of the arbitration case.

³⁸ *Burgos v. Bereber*, A.C. No. 12666, March 4, 2020. Citations omitted.

³⁹ *Parungao v. Lacuanan*, A.C. No. 12071, March 11, 2020.

⁴⁰ *Rollo* (vol. II), pp. 334-343.

⁴¹ *Id.* at 342.

⁴² *Id.*, unpaginated (Extended Resolution, p. 8).

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The Collection Retainership Agreement expired on December 31, 2011 and was never renewed, while the arbitration case was filed in May 2012.⁴³ Considering the foregoing, respondents did not represent both opposing parties (*i.e.*, HGC and BSCDC) in an issue or claim, particularly the arbitration case.

For the second test, there is conflict of interest if the acceptance of a new relation or engagement will prevent the lawyer from faithfully performing his duties to a client. The second test is not relevant to the instant case; the factual circumstances did not include allegations of respondents' acceptance of a new relation while being counsel of HGC that prevented them from faithfully performing their duties to it. There is no showing that BSCDC is a new client of the Law Firm.

The third test provides that there is conflict of interest if the lawyer, in a new relation, would be called upon to use against a former client any confidential information he has acquired through their connection or previous employment. This test specifically applies to situations where the professional relationship with a former client was already terminated when the lawyer was engaged by a new client.⁴⁴ The Court stated that "for there to be conflicting interests when a former client is involved, the following circumstances must concur: (a) the lawyer is called upon in his present engagement to make use against a former client confidential information[,] which was acquired through their connection or previous employment[;] and (b) the present engagement involves transactions that occurred during the lawyer's employment with the former client and matters that the lawyer previously handled for the said client."⁴⁵ Related to this, proof must be adduced to show that the former client intended the information to be confidential; mere relation between attorney and client does not create a presumption of confidentiality.⁴⁶

Indeed, the professional relationship between the Law Firm and HGC expired on December 31, 2011. However, there is no proof that the Law Firm, in a new matter, used against HGC confidential information acquired from their previous relation. HGC merely made allegations that respondents represented BSCDC while being engaged as its counsel. To reiterate, the subject of arbitration are matters not handled by the Law Firm; the Law Firm was engaged for collection purposes only—this is clear in the Collection Retainership Agreement as adduced in evidence. In any event, there is no new relation to speak of as BSCDC is not a client of the Law Firm.

⁴³ *Id.* (Id. at 7-8).

⁴⁴ *Parungao v. Lacuanan*, *supra*.

⁴⁵ *Id.*

⁴⁶ *Id.*

Based on the foregoing, the Court finds and affirms that respondents did not violate the conflict of interest rule.

On the charge of unlawful withholding of documents, HGC claims that respondents failed and refused to return documents when due and upon demand. The Court finds the charge to be partly meritorious.

In this regard, the CPR provides:

CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.01 A lawyer shall account for all money or property collected or received for or from the client.

x x x x

Rule 16.03 A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

It has been consistently held that any money or property collected for the client coming into the lawyer's possession should be promptly declared and reported to the client.⁴⁷ The Court, however, recognizes that a lawyer is entitled to a lien over funds, documents and papers of his client which have lawfully come into his possession for purposes of satisfying the legal fees and disbursements due to him.⁴⁸ Rule 16.03 of the CPR allows this upon prompt notice to the client. This is also provided in Section 37, Rule 138 of the Rules of Court.⁴⁹ The lien covers documents such as titles and other pertinent papers. In this relation, the Court has long held that a lawyer is not entitled to unilaterally appropriate his client's money, as well as properties and documents, for himself by the mere fact that he is owed legal fees.⁵⁰ It is essential that the client consent to the application of his property or funds to the legal fees, in which case the lawyer may deduct what is due him and return the excess to the

⁴⁷ *Spouses Cuña, Sr. v. Elona*, A.C. No. 5314, June 23, 2020.

⁴⁸ *Id.*

⁴⁹ Section 37. Attorneys' liens. — An attorney shall have a lien upon the funds, documents and papers of his client, which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. x x x x

⁵⁰ *Luna v. Galarriga*, 763 Phil. 175, 194 (2015).

client.⁵¹ Absent the client's consent, the lawyer must return the funds to the client, without prejudice to the filing of a case to recover the unpaid fees.⁵²

Here, HGC claims that respondents failed to return documents related to the collection services, specifically 53 owner's duplicate copies of transfer certificates of title and other various documents, after the termination of their retainership agreement. Respondents on the other hand argue that the majority of these titles were already returned to HGC. They state, however, that only a total of four titles are unaccounted for. This is negligible, according to respondents, considering the voluminous transactions endorsed to the Law Firm and ESP in the performance of the collection services.

Records show that respondents are no longer in possession of the documents that HGC claims to be unlawfully withheld. As found by the IBP, the titles were already returned by the Law Firm to HGC as evidenced by turnover letters as attached to respondents' position paper.⁵³ Assuming that there are still unaccounted titles as stated by respondents, it does not mean that respondents are in possession of these absent any contrary proof. Being unaccounted, it is possible that those titles are with government agencies or third parties that got hold of those during the course of the collection process.

True, the documents have already been returned to HGC as based on the evidence adduced, save for those unaccounted ones. The Court, however, takes note that as of the date of filing of the complaint in 2015, respondents have yet to return the documents. In other words, respondents are still in possession of some of these documents at the time of filing of the complaint. A careful examination of records show that they were returning documents to HGC up until 2018.⁵⁴ They even admitted this in their position paper.⁵⁵

Respondents then claim that they were merely exercising their right to withhold to exercise retaining lien for unpaid fees. The Court, however, finds that the requisites to exercise lien were not met. As discussed, it is essential that the client consent to the application of its property to the unpaid fees because a lawyer cannot unilaterally appropriate his client's property. Here, there is no proof that HGC consented to the respondents' withholding of the titles to satisfy the unpaid legal fees. Thus, the Court finds that respondents improperly exercised its right to retain HGC's documents as lien.

Jurisprudence provides that the penalty for a violation of Canon 16 of the CPR ranges from suspension from practice for six months to two years, or even

⁵¹ *Spouses Cuña, Sr. v. Elona*, supra note 47, citing *Luna v. Galarrita*, supra.

⁵² *Id.*

⁵³ *Rollo* (vol. II), unpaginated (Extended Resolution p. 4).

⁵⁴ *Id.* at 346-377.

⁵⁵ *Id.* at 282-283.

disbarment, depending on the circumstances of each case.⁵⁶ The Court acknowledges the fact that the documents were already returned to HGC during the pendency of this case. It remains, however, that respondents committed a violation of Canon 16 of the CPR at the time of the filing of the complaint. Considering these circumstances, the Court deems it proper to reprimand respondents, specifically Atty. Tagayuna and Atty. Panopio, with a stern warning that a repetition of a similar offense shall merit a heavier penalty.

As for respondent Atty. Gangan, the Court adopts the recommendation of dismissal of the complaint as against him in view of his death during the pendency of the case. It is settled that “the death of a respondent in an administrative case before its final resolution is a cause for its dismissal.”⁵⁷

As for respondent Atty. De Pano, the Court likewise adopts the recommendation of dismissal of the complaint against him in view of his resignation from the Law Firm. Records show that he resigned from the Law Firm on December 8, 2011. He was already separated from the Law Firm when the arbitration case, the origin of the alleged violation of the conflict of interest rule, was filed in 2012. Also, as a result of his resignation, Atty. De Pano was no longer in possession of the documents alleged to be unlawfully retained by the Law Firm after the expiration of their relationship with HGC. Therefore, the dismissal of the complaint as against him is likewise proper.

WHEREFORE, the Court rules as follows:

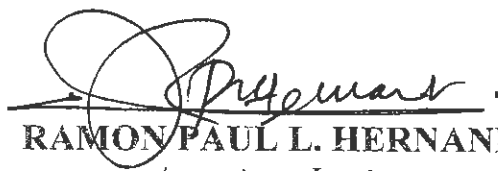
1. The administrative complaint as against respondents Atty. Renato De Pano, Jr. and Atty. Jose A. Gangan is **DISMISSED**.
2. The Court finds respondents Atty. Lamberto T. Tagayuna and Atty. Elmar A. Panopio **GUILTY** of violating Rules 16.01 and 16.03 of Canon 16 of the Code of Professional Responsibility. They are **REPRIMANDED** with a **STERN WARNING** that a repetition of a similar offense shall merit a heavier penalty.

Let a copy of this Decision be attached to Atty. Lamberto T. Tagayuna’s and Atty. Elmar A. Panopio’s personal records in the Office of the Bar Confidant. Furnish copies of this Decision to the Integrated Bar of the Philippines for its information and guidance.

⁵⁶ *Luna v. Galarrita*, supra note 50, citing *Cerdan v. Gomez*, 684 Phil. 418, 428 (2012).

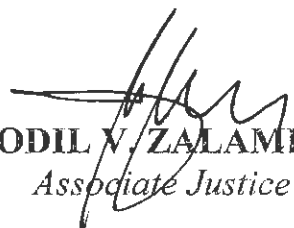
⁵⁷ *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan Del Norte*, A.M. No. RTJ-17-2486, September 8, 2020.

SO ORDERED.

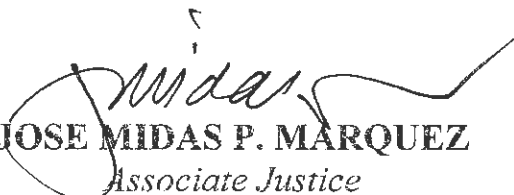

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice