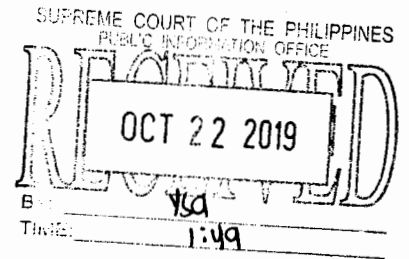




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

ANA MARIA KARE,
Complainant,

A.C. No. 8777

Present:

- versus -

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

ATTY. CATALINA L. TUMALIUAN,
Respondent.

Promulgated:

October 9, 2019

Mis RDCBatt

X-----X

DECISION

PERALTA, J.:

Before the Court is a Complaint-Affidavit¹ filed by complainant Ana Maria Kare on October 26, 2010 against respondent Atty. Catalina L. Tumaliuan for allegedly committing deceitful and fraudulent acts which are prejudicial to the legal profession and in serious violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility.

The antecedent facts are as follows:

Kare narrated that in a Contract to Sell² dated April 29, 2009, she sold to Tumaliuan her house and lot located at No. 8 Yakal Street, Vista Real Subdivision, Matandang Balara, Quezon City, for the total amount of ₱7,100,000.00. As part of the payment, Tumaliuan persuaded Kare to accept a Toyota Fortuner 2007 model. Reluctantly, Kare accepted the offer but with the agreement that the vehicle be covered by a document as proof

* On leave.

¹ *Rollo*, pp. 2-4.

² *Id.* at 7-9.

of transfer to her. Thus, the parties executed a Sale of Motor Vehicle on September 22, 2009, which states that the vehicle's value was ₱1,000,000.00, but as a result of her bargaining, Kare was able to convince Tumaliuan to place the same at a lower value of ₱900,000.00. According to Kare, Tumaliuan merely gave her a photocopy of the Certificate of Registration (CR) No. 5000280-5³ dated April 3, 2007 and consistently failed to give her the original CR despite repeated demands. Thus, she was forced to engage the services of a lawyer to formally demand Tumaliuan to deliver to her the said original, but to no avail. Suspicious by Tumaliuan's incessant refusal, Kare went to the Land Transportation Office (LTO) of Novaliches and to her surprise, she discovered that the subject vehicle was actually encumbered with a Chattel Mortgage⁴ executed by Tumaliuan in favor of Banco De Oro Universal Bank (BDO) indicated on the CR No. 5739951-0 dated September 13, 2007. This was the reason why Tumaliuan could not produce the original CR.⁵

Kare, therefore, maintained that Tumaliuan acted with evident bad faith when she pretended to have the full title and ownership of the subject vehicle when in truth and in fact, the same was mortgaged with BDO. In the Sale of Motor Vehicle, Tumaliuan stipulated "that I hereby warrant unto the said ANA MARIE KARE full title and ownership over the vehicle above-described in favor of any person or entity." According to Kare, had she known of such encumbrance, she would not have accepted the vehicle as partial payment for her house and lot and would have demanded for cash payment instead. This deliberate and willful non-disclosure of the existence of the chattel mortgage was intended to defraud her of the value of ₱900,000.00 which she applied as additional partial payment, and as a result, she is now greatly prejudiced because once BDO gains knowledge of the sale, the vehicle can instantly be taken from her.⁶

Tumaliuan, however, denied the charges against her. At the outset, she accused Kare of perjury for indicating in her complaint that she was residing at No. 8 Yakal Street, Vista Real Subdivision, or at the subject house she sold to the former when she already vacated said address on February 19, 2010. On the contrary, it was Tumaliuan who was already residing therein. Tumaliuan also faulted Kare when she said that the house and lot was still registered in her name when the same was already transferred in the name of the Government Service Insurance System (GSIS) as a result of the housing loan she obtained therefrom. Finally, Tumaliuan charged Kare of violating the rule against forum shopping when she intentionally failed to disclose the fact that she also filed a complaint before

³ *Id.* at 11.

⁴ *Id.* at 13-15.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3-4.

the Office of the City Prosecutor for estafa involving the same parties and the same issues.⁷

On Kare's claims, Tumaliuan consistently denied the allegations of fraud and bad faith. She insisted that she did not persuade Kare to accept the vehicle as part of her payment. In truth, it was Kare who dreamed of owning a Fortuner and requested that the same be given as part of the purchase price. Tumaliuan eventually acceded. Thus, she executed a Sale of Motor Vehicle and handed to Kare the photocopies of the CR and Official Receipt (*OR*) for the latter to verify the vehicle's status with the LTO as well as to check if it is included in the Highway Patrol Group's list of stolen vehicles.

According to Tumaliuan, on the same day of the execution of the Sale of Motor Vehicle on September 22, 2009, she simultaneously surrendered the vehicle itself together with the photocopies of the CR and OR. She further insisted that Kare was fully aware of the fact that the subject vehicle was mortgaged to BDO for a loan that expires in March 2011. It is highly unbelievable that Kare, a licensed physician, was unaware of said fact and remained so for an entire year and one month from the time that she received the vehicle on September 22, 2009 until the day she decided to file the instant complaint on October 26, 2010. In fact, it is common practice for buyers to verify the status of the property they are acquiring. Thus, the doctrine of "*caveat emptor*" should apply. Besides, she cannot be held guilty of fraud since she never made Kare believe that the vehicle was free from all liens and encumbrances. In the Sale of Motor Vehicle itself, she merely stated that she conveys "full title and ownership" over the said vehicle and not that it was "free from all liens and encumbrances." In the end, Tumaliuan pointed out that she has been a lawyer for almost fifteen years with good standing and an active officer of the Integrated Bar of the Philippines, Manila Chapter. As such, she could not have engaged in any deceitful conduct or put her name into shame.⁸

In a Report and Recommendation⁹ dated May 6, 2014, the Investigating Commissioner of the Commission on Bar Discipline (*CBD*) of the Integrated Bar of the Philippines (*IBP*) recommended that Tumaliuan be ordered to reconstitute Kare and to transfer full title of the subject vehicle to the latter by causing its registration in the latter's name at Tumaliuan's expense. If such registration is not possible, it advised the parties to mutually rescind the contract of sale of said vehicle with Kare returning the vehicle to Tumaliuan and Tumaliuan returning the ₱1,000,000.00 consideration of such sale. As for Tumaliuan, the Investigating Commissioner recommended that she be suspended from the practice of law for a period of six (6) months in

⁷ *Id.* at 20-26.

⁸ *Id.* at 20-22.

⁹ *Id.* at 41-46.

view of the fact she has been a lawyer with good standing and the fact that the nature of her misrepresentation is not so grave.¹⁰

In a Resolution¹¹ dated October 11, 2014, the Board of Governors (BOG) of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner suspending Tumaliuan from the practice of law for period of one (1) year. Subsequently, in another Resolution¹² dated October 28, 2015, the BOG denied Tumaliuan's Motion for Reconsideration there being no cogent reason to reverse the previous findings.

The Court's Ruling

After a judicious review of the instant case, We concur with the recommendation of the Investigating Commissioner as affirmed by the BOG, that Atty. Tumaliuan should be held administratively liable.

At the outset, the Court refrains from condemning Kare for stating in her complaint that her address is at the residence subject of the sale when she no longer resided therein. As the Investigating Commissioner disposed, good faith is well to credit to her in believing that until the title of the vehicle which formed part of the purchase price for the said house and lot is transferred to her, the sale has not yet been fully consummated and she can still validly claim ownership over the said real property.¹³

Neither shall We sustain Tumaliuan's contention that Kare is guilty of forum shopping. Time and again, the Court has ruled that forum shopping consists of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It may also consist in a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another forum other than by appeal or special civil action of *certiorari*. The most important factor in determining the existence of forum shopping is the vexation caused the courts and parties-litigants by a party who asks different courts to rule on the same or related causes or grant the same or substantially the same reliefs.¹⁴

Accordingly, forum shopping may be committed in three ways: (1) through *litis pendentia* - filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved

¹⁰ *Id.* at 45-46.

¹¹ *Id.* at 39-40.

¹² *Id.* at 37-38.

¹³ *Id.* at 43-44.

¹⁴ *Velasquez v. Hernandez*, 480 Phil. 844, 857 (2004).



yet; (2) through *res judicata* - filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and (3) splitting of causes of action - filing multiple cases based on the same cause of action but with different prayers - the ground to dismiss being either *litis pendentia* or *res judicata*. Common in these is the identity of causes of action defined as "the act or omission by which a party violates the right of another."¹⁵

Here, Kare filed two (2) complaints against Tumaliuan. *First*, she filed the instant complaint for disbarment dealing with the proper administrative liability, if any, incurred by Tumaliuan for her acts prejudicial to the legal profession and in violation of the Code of Professional Responsibility. Specifically, she alleged that Tumaliuan purchased her house and lot in exchange for a vehicle that turned out to be encumbered. *Second*, Kare filed a criminal complaint for estafa before the City Prosecutor for violation of Article 315, par. 3(a) of the Revised Penal Code dealing as it does her alleged inducement of Kare, by means of deceit, to enter into the sale of the motor vehicle previously mortgaged in BDO's favor. Evidently, the rule on forum shopping finds no proper application for while the two cases are based on the same essential facts and circumstances, they do not raise identical causes of action and issues. Well settled is the rule that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability. As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense.¹⁶ Being entirely different proceedings, moreover, the dismissal of an administrative case does not necessarily foreclose the filing of a criminal prosecution for the same or similar acts which were the subject of the administrative complaint.¹⁷

As for the accusations of dishonesty against Tumaliuan, We find that penalty of one (1) year suspension imposed by the BOG, is proper. Canon 1 and Rule 1.01 of the Code of Professional Responsibility provide:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

In the present case, Tumaliuan purchased a house and lot in 2009 owned by Kare for ₱7,100,000.00 and as part of her payment, she gave the latter a motor vehicle they agreed to value at ₱900,000.00. It turns out,

¹⁵ *Yamson, et al. v. Castro, et al.*, 790 Phil. 667, 692-693 (2016).

¹⁶ *Paredes v. Court of Appeals*, 555 Phil. 538, 550 (2007).

¹⁷ *Id.* at 552.



however, that said vehicle was actually mortgaged in favor of BDO for a loan obtained by Tumaliuan in 2007 in the amount of ₱1,325,568.00 expiring in 2011.

But according to Tumaliuan, she should not be held administratively liable because Kare already knew of the encumbrance. Contrary to Kare's claims that she was unaware of the mortgage in favor of BDO, Tumaliuan insists that she duly informed Kare of the same when she gave the photocopies of the OR and CR. As such, Kare should be deemed fully aware of the mortgage attached to the vehicle. We, however, cannot sustain such contention. As shown by the records, nowhere in said photocopies was the existing mortgage indicated. This is precisely why Kare was demanding for the original OR and CR. Tumaliuan argues that she handed Kare the photocopies for the latter to check for herself the status of the vehicle. But she could have simply informed Kare of the same from the very beginning. That Tumaliuan gave Kare photocopies of the OR and CR is not synonymous with informing her of the attachment on the vehicle. Thus, in the absence of any indication that Tumaliuan duly notified Kare that the vehicle she was using as payment was actually encumbered, Kare's awareness of the same cannot be hastily presumed.

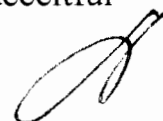
Ultimately, the circumstances of the present case disprove Tumaliuan's declarations of good faith. To illustrate, the Court wonders why Tumaliuan conveniently failed to state in the Deed of Sale of Vehicle, she herself prepared, the important detail that the vehicle was already mortgaged in BDO's favor. As the Investigating Commissioner pointed out, if Tumaliuan was, indeed, in good faith, she should have at least shown or delivered the mortgage agreement to Kare upon the execution of the sale of the vehicle. This is especially so considering that the mortgage agreement explicitly provides a restriction on the sale of the vehicle such that a sale executed by Tumaliuan without the prior written consent of the BDO shall give the latter the right to declare the entire obligation due and demandable, to take actual possession of the vehicle without need of any court order, and to sell and dispose of the same.¹⁸ Indeed, a lawyer who drafts a contract must see to it that the agreement faithfully and clearly reflects the intention of the contracting parties. Otherwise, the respective rights and obligations of the contracting parties will be uncertain, which opens the door to legal disputes between the said parties.¹⁹

In *Saladaga v. Astorga*,²⁰ We have ruled that to be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be untrustworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness. We have also ruled that conduct that is "deceitful"

¹⁸ *Rollo*, p. 60.

¹⁹ *Saladaga v. Atty. Astorga*, 748 Phil. 1, 11 (2014).

²⁰ *Id.* at 13.



means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. In order to be deceitful, the person must either have knowledge of the falsity or acted in reckless and conscious ignorance thereof, especially if the parties are not on equal terms, and was done with the intent that the aggrieved party act thereon, and the latter indeed acted in reliance of the false statement or deed in the manner contemplated to his injury.²¹

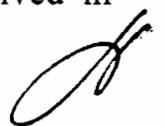
Accordingly, there seems to be nothing unreasonable with the expectation that Tumaliuan exercises good faith in all his dealings, whether in her professional or private capacity. To repeat, she sought to acquire the house and lot of Kare in exchange for cash and her Toyota Fortuner that she had already mortgaged in favor of BDO. Such important fact, moreover, was withheld from Kare, the recipient of the vehicle. In fact, as Kare pointed out, Tumaliuan has yet to comply with her end of their agreement by giving her a clean title to said vehicle or even a document evidencing the release of the same from attachment, without which she cannot transfer the same to her name. Time and again, the Court has ruled that membership in the legal profession is a high personal privilege burdened with conditions, including continuing fidelity to the law and constant possession of moral fitness. Lawyers, as guardians of the law, play a vital role in the preservation of society, and a consequent obligation of lawyers is to maintain the highest standards of ethical conduct. Failure to live by the standards of the legal profession and to discharge the burden of the privilege conferred on one as a member of the bar warrant the suspension or revocation of that privilege.²²

In view of the foregoing, the Court finds no cogent reason to depart from the resolution of the BOG to suspend Tumaliuan from the practice of law for a period of one (1) year. Nevertheless, We shall not adopt the recommendation of the Investigating Commissioner to reconstitute Kare by transferring full title to the latter of the subject vehicle and if such transfer is not possible, to mutually rescind the contract of sale of said vehicle with Kare returning the vehicle to Tumaliuan and Tumaliuan returning the ₱1,000,000.00 consideration of such sale. In *Roa v. Atty. Moreno*,²³ the Court pronounced that “[i]n disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other.” As such, while Tumaliuan’s wrongful actuations may give rise at the same time to criminal, civil, and administrative liabilities, each must be determined in the appropriate case; and every case must be resolved in

²¹ *Id.*

²² *Id.* at 5.

²³ 633 Phil. 1, 8 (2010), cited in *Saladaga v. Atty. Astorga, id.* at 15.

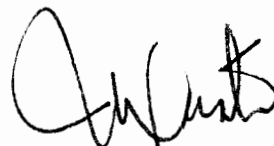


accordance with the facts and the law applicable and the quantum of proof required in each.²⁴

WHEREFORE, respondent Atty. Catalina L. Tumaliuan is hereby found **GUILTY** of committing dishonest, deceitful, and fraudulent acts prejudicial to the legal profession and in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility. Accordingly, she is **SUSPENDED** from the practice of law for a period of one (1) year, reckoned from receipt of this Decision, with **WARNING** that a similar misconduct in the future shall be dealt with more severely.

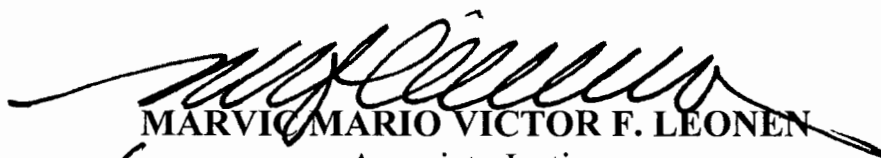
Let a copy of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Court Administrator is directed to circulate this Decision to all courts in the country.

SO ORDERED.





DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

On leave
HENRI JEAN PAUL B. INTING
Associate Justice

²⁴

Saladaga v. Atty. Astorga, supra note 16, at 15-16.