

THIRD DIVISION

A.C. No. 13601 (Formerly CBD Case No. 20-6315) – MARY ANN B. CASTRO, complainant, versus ATTY. ZENAIDA DT. SORIANO, respondent.

Promulgated:

April 17, 2023

X ----- MISTRESS ----- X

CONCURRING OPINION

“Undoubtedly, lawyers should be allowed some latitude of remark or comment in the furtherance of causes they uphold. For the felicity of their clients they may be pardoned some infelicities of phrase.”

- *Dorado v. Pilar*¹

CAGUIOA, J.:

The instant complaint is anchored mainly on respondent’s use of the word “mistress” to describe herein complainant in the Legal Notice that respondent, on behalf of her client, Alegria A. Castro (Alegria), sent to Spouses Ferdinand and Rowena Sendin² (Spouses Sendin), the buyers of the two lots (subject lots) that were previously registered in the names of Constancio Castro (Constancio) and Rosario Castro-Mariano³ (Rosario). Said lots were sold to Spouses Sendin by Alegria’s late husband, Joselito S. Castro (Joselito), through a Special Power of Attorney (SPA) issued by Constancio and Rosario,⁴ and allegedly, with the help of herein complainant.⁵ The relevant portion of the Legal Notice reads as follows:

6. By the “selling price”, clearly, you are also NOT an innocent purchaser of (*sic*) value. You bought the subject property for Eight Hundred Thousand Pesos (₱800,000.00) while its market value at the time of “sale” is (*sic*) Ten Million Pesos (₱10,000,000.00). **Our client believes that you grabbed the cheap offer of Joselito and his mistress Mary Ann B. Castro** despite the obvious notice of defects in the title, in the sale transaction, and in Joselito’s authority.⁶ (Emphasis supplied)

Respondent refutes complainant’s allegation that the use of the word “mistress” was uncalled for, malicious, and offensive in nature. Respondent

¹ 104 Phil. 743, 748 (1958).
² *Rollo*, pp. 5-6. Complaint-Affidavit.
³ *Id.* at 8, Legal Notice.
⁴ *Id.*
⁵ *Id.* at 87-99, Verified Answer.
⁶ *Id.* at 9, Legal Notice.

asseverates in her Verified Answer⁷ that complainant's affair with Joselito was indeed extra-marital, since the latter had a subsisting marriage with Alegria during the course of his relationship and "marriage" with complainant.⁸ More importantly, respondent avers that the use of the word "mistress" was relevant to the subject of the Legal Notice and was not intended to besmirch the reputation of complainant, but to invite Spouses Sendin to renegotiate the sale with Alegria for a fair price.⁹ At this point, it is important to note that Alegria maintains that she is the true and lawful owner of the subject lots by virtue of a written instrument of sale executed in her favor.¹⁰ Thus, respondent stated:

x x x respondent humbly admits that **she could not find a better word substitute that will not only capture the factual background but will also faithfully clarify the implication of the word on the civil status and successional rights of her client and of the complainant.**

x x x x

Specifically, **Alegria's proposition was for Mr. Sendin to deal with her – and not with complainant Mary Ann – not only because she (Alegria) is the first and legal wife of Joselito[,] but also because she is the real owner of the disputed lands subject of the letter. Thus, it is necessary to describe the extra-marital nature of the relationship of Alegria's husband and herein complainant Mary Ann to deliver the important point and distinction.**¹¹ (Emphasis supplied)

The *ponencia* of Associate Justice Japar B. Dimaampao dismisses the case for failure of complainant to establish by substantial evidence that respondent violated Canon 8 of the Code of Professional Responsibility (CPR), which proscribes lawyers from using language or words that are abusive, offensive, or otherwise improper.¹² In fine, the *ponencia* finds that the use of the word "mistress" was relevant and pertinent to the subject matter of the Legal Notice,¹³ and was made in the performance of respondent's legal duty to her client.¹⁴ Accordingly, since respondent's statement was made in the context of privileged communication, she should not be held liable therefor.¹⁵

In all, I concur with the dismissal of the complaint, and agree with the *ponencia* that respondent should not be held liable for violating Canon 8 of the CPR. Yet, for the guidance of the Bench, the Bar, and the public, I write this Opinion to offer a nuanced discussion on the matter of privileged communication, as well as to rebut the points raised by Associate Justice Samuel H. Gaerlan (Justice Gaerlan) in his Dissenting Opinion.

⁷ Id. at 87-99.

⁸ Id. at 92.

⁹ Id. at 88.

¹⁰ Id. at 8, Legal Notice.

¹¹ Id. at 89 and 92.

¹² *Ponencia*, p. 4.

¹³ Id. at 5.

¹⁴ Id.

¹⁵ Id.



The doctrine of privileged communication is explicitly provided in the Revised Penal Code,¹⁶ as an exception to the rule that every defamatory imputation is presumed to be malicious, even if true, absent showing of good intention and justifiable motive.¹⁷ It covers a private communication made by any person to another in the performance of any legal, moral, or social duty.¹⁸

As enunciated in *Deles v. Aragona, Jr.*,¹⁹ the doctrine has a practical purpose, to wit:

The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of public welfare, **the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for damages.**²⁰ (Emphasis supplied)

However, in order to be cloaked with protection, the Court has time and again ruled that the communication must satisfy the requirement of **relevancy**.²¹ The test is simple: if the statements are pertinent or material to the cause in hand, these are covered by the privilege however defamatory or malicious.²²

In determining the pertinency or relevancy of the statements, **the Court should favor the liberal rule**. The test of relevancy is satisfied if the statement is “legitimately related, or so pertinent to the subject of the controversy that it may become the subject of the inquiry in the course of the trial.”²³ Shedding light on this matter, the Court explained in *Tolentino v. Baylosis*²⁴ that:

And the test of relevancy has been stated thus:

“ . . . As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. **The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety.** In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of

¹⁶ REVISED PENAL CODE, Art. 254.

¹⁷ *People v. Sesbreno*, 215 Phil. 411 (1984).

¹⁸ REVISED PENAL CODE, Art. 254.

¹⁹ 137 Phil. 61 (1969).

²⁰ *Id.* at 72-73.

²¹ *People v. Aquino*, 124 Phil. 1179, 1186 (1966).

²² *People v. Sesbreno*, supra note 17, at 417.

²³ *Id.*

²⁴ 110 Phil. 1010 (1961).



inquiry in the course of the trial. . . .” (Ruling Case Law, vol. 17, p. 336, quoted with approval in *Smith Bell & Co. vs. Ellis*, 48 Phil., 475, 581-582).

“In the earliest of the leading cases on the subject the words used in determining the extent of matter that may be absolutely privileged were ‘relevant’ or ‘pertinent’, but these words have in a measure a technical meaning, and perhaps they are not the best words that could be used. So some courts have preferred the use of the words ‘have in reference’, ‘having relation to the cause or subject matter’, or ‘made with reference’; and strict legal materiality or relevancy is not required to confer the privileges. **There is difficulty in determining in some cases what is relevant or pertinent and in deciding the question the courts are liberal, and the privilege embraces anything that may possibly be pertinent or which has enough appearance of connection with the case so that a reasonable man might think it relevant. All doubt should be resolved in favor of its relevancy or pertinency, and for the purposes of relevancy the court will assume the alleged slanderous charges to be true, however, false they may have been in fact.**” (53 C.J.S., pp. 171-172).²⁵ (Emphasis supplied)

Applying the test of relevancy here, while I agree that the word “mistress” may automatically give a negative connotation, I concur with the *ponencia* that respondent lawyer herein should not be held liable for using such language, as the same was made in the context of privileged communication. While lawyers are exhorted to always uphold the dignity of the legal profession, they should be allowed some latitude to zealously defend the cause of their clients.

To my mind, the use of the word “mistress” was relevant to the controversy between Alegria and Spouses Sendin over the subject lots. When Alegria found out that her lots were sold to Spouses Sendin by her late husband and complainant, she sent the Legal Notice to the buyers, with either the retrieval of the subject lots or the renegotiation of the sale, as end in mind.

Complainant admitted in her Position Paper that she would accompany Joselito during the negotiation of the sale since he had been suffering from a heart ailment.²⁶ Considering the surrounding circumstances, it can be reasonably presumed that Joselito had introduced complainant herein as his wife to Spouses Sendin. Otherwise, Spouses Sendin would not have involved complainant in the transaction, paid her the purchase price, and allowed her to deposit the proceeds to her bank account, based on the evidence provided by Alegria to respondent.²⁷ Thus, to make things clear, respondent deemed it relevant to clarify matters and inform Spouses Sendin of the extra-marital

²⁵ Id. at 1013-1014.

²⁶ *Rollo*, p. 183.

²⁷ Id. at 93.



nature of the relationship between Joselito and complainant herein.²⁸ With the demise of Joselito, respondent reasonably expected that Spouses Sendin would refer the Legal Notice to complainant herein, not just because of her participation in the subject sale, but because Spouses Sendin knew complainant as the surviving spouse and legal representative of Joselito.

Respondent's purpose for describing complainant herein as Joselito's "mistress" cannot be denied. As aptly raised by the *ponencia*, "[i]f only to emphasize the illegality of Joselito and complainant's relationship and give full warning as to the possible impediments to the title of the people they were transacting with, respondent's statement must be considered to have been made in the context of a privileged communication."²⁹ Verily, respondent's zealous opposition to the sale transacted by Joselito and complainant was made in legitimate defense of the interest of her client, who she believes is the real owner of the disputed lands.

Again, "**all doubts should be resolved in favor of relevancy**, and for the purposes of relevancy **the court will assume the alleged slanderous charges to be true, however, false they may have been in fact.**"³⁰ Thus, even assuming complainant was not really Joselito's mistress, the Court cannot hold respondent liable therefor, not just because her trusts are not without basis, but because her statement was privileged to begin with.

In his Dissenting Opinion, Justice Gaerlan disputes the relevancy of the use of the word "mistress." He stresses that since Alegria is not the registered owner of the subject lots, informing the Spouses Sendin of the alleged extra-marital relation between Joselito and complainant "serves no other purpose than revealing the indiscretion of Alegria's husband and maligning the character of complainant."³¹ He further states that:

The scenario would be different had Alegria been the registered owner of the subject property. In this case, the buyers might assume that Alegria authorized her husband, Joselito, to sell the property. x x x

x x x x

Here, respondent could protect and defend her client's interest by simply stating in the notice that the registered owners already sold the property to Alegria and that Joselito's SPA from the registered owners is void for being a forgery. x x x³²

While Justice Gaerlan's observation is not totally invalid, it cannot also be denied that respondent had a worthy reason for pointing out the extra-marital nature of the relationship between Joselito and complainant. Therefore, I cannot join Justice Gaerlan's conclusion that respondent merely

²⁸ Id. at 92.

²⁹ *Ponencia*, pp. 5-6.

³⁰ *Tolentino v. Baylosis*, supra note 24, at 1014.

³¹ Dissenting Opinion of Justice Gaerlan, p. 3.

³² Id. at 3-5.



intended to maliciously malign the character of complainant. On this score, it is important to emphasize anew that under the liberal rule, “the privilege embraces **anything that may possibly be pertinent or which has enough appearance of connection** with the case.”³³

In light of the foregoing, I agree that the case should be dismissed, as the use of the word “mistress” was made within the trench of relevancy.

Be that as it may, assuming respondent’s use of the word “mistress” was not made within the context of privileged communication, respondent should still not be held administratively liable as she did not go beyond the bounds of propriety. To be sure, the Court cannot extend the privilege to patently offensive statements, which vent ill-feelings towards the opposing counsel,³⁴ or those that serve no purpose other than to spite or satisfy another counsel’s rancor,³⁵ or those that cast aspersions and demeans the integrity of the profession and the Judiciary.³⁶ The Court should not countenance undignified or unprofessional use of language from members of the Bar. Derogatory statements and personal attacks do not further one’s legal arguments; neither do they adequately protect a client’s interests. Such remarks or comments go beyond the bounds of relevancy and propriety, and therefore, are not covered by the doctrine of privileged communication. As the Court held in *Gutierrez v. Abila*:³⁷

The requirement of materiality and relevancy is imposed so that the protection given to individuals in the interest of an efficient administration of justice may not be abused as a cloak from beneath which private malice may be gratified.³⁸

Juxtaposed against the foregoing, the language subject of the present complaint was clearly not borne out of a personal animosity against the complainant. As reasoned by respondent in her Verified Answer, she used the word “mistress” in its neutral dictionary and legal meaning.³⁹ She had no reason to hurt complainant’s feelings, as she does not even know her personally and has no personal interest or stake in the dispute. According to respondent, she merely based her language and actions on the facts and evidence presented to her by her client. At any rate, respondent in her Answer expressly apologized to complainant if the language she used was hurtful.⁴⁰

In all, the Court should always balance claims that lawyers used abusive language with the lawyers’ duty to represent their clients with zeal, and with utmost competence and diligence.⁴¹ Lawyers often resort to strong and

³³ *Tolentino v. Baylosis*, supra note 24 at 1014.

³⁴ *Torres v. Javier*, 507 Phil. 397, 408 (2005).

³⁵ *Gutierrez v. Abila*, 197 Phil. 616, 622 (1982).

³⁶ See *Pobre v. Defensor-Santiago*, 613 Phil. 352, 361 and 365 (2009).

³⁷ *Gutierrez v. Abila*, supra note 35.

³⁸ Id. at 622.

³⁹ *Rollo*, p. 89.

⁴⁰ Id.

⁴¹ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18 and Canon 19.



powerful language in order to advocate for the causes they represent, and to persuade the tribunal to rule in their favor. **They should be accorded some freedom — within reasonable limits — to use words that can convey their eagerness to pursue their client’s causes.** Ruling otherwise unnecessarily hampers their ability to discharge their duties to their clients with the fervency and zeal required by the legal profession.

All told, I concur with the *ponencia* and **VOTE** to **DISMISS** the complaint against respondent.

A handwritten signature in black ink, appearing to read 'ABC', is written over a faint, dotted-line signature. The signature is positioned above the printed name and title.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice