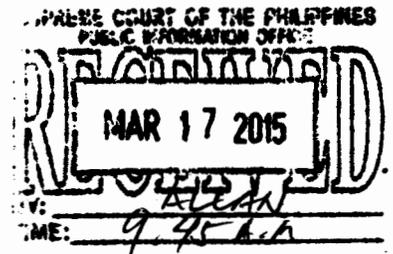




Republic of the Philippines  
Supreme Court  
Manila



EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **MARCH 10, 2015**, which reads as follows:

**“A.C. No. 7037 (Court of Appeals v. Atty. Agustin C. Tarroza) -** The charge against respondent stems from a referral by the Twenty-First Division of the Court of Appeals to the Supreme Court, for respondent to be investigated for forum shopping. The referral was contained in the Decision of the said Division in CA-G.R. SP No. 59859, dated October 24, 2005, entitled *Spouses Plaza, et al. v. Jardin, et al.* On June 20, 2006, the Court issued a Resolution referring the case to the Integrated Bar of the Philippines for investigation, report and recommendation.

As found by the Investigating Commissioner, the following are the facts of the case:

Pending before the 21<sup>st</sup> Division was a petition for certiorari against an Order dated December 14, 1999 of the Regional Trial Court (Branch 5) in Civil Case No. 4919 entitled *Spouses Plaza v. Lustiva, et al.*. The said Order was a resolution of a motion for reconsideration and which set aside a writ of preliminary injunction earlier issued. Civil Case No. 4919 was a case for Injunction with Damages. The petition for certiorari was filed before the Court of Appeals on July 3, 2000.

During the pendency of this petition with the Court of Appeals, Silvestre Plaza, through his lawyer, herein respondent, filed on December 5, 2000, before the RTC (Branch 3) of Butuan City, a Complaint for Specific Performance against the city government of Butuan, docketed as Civil Case No. 5071 praying that the city government of Butuan be ordered “to execute the necessary Certificate of Sale or Deed of Sale” over a parcel of agricultural land, in favor of the plaintiff. On August 6, 2003, the RTC in Civil Case No. 5071 rendered judgment in favor of the plaintiff, herein respondent’s client. The filing of Civil Case No. 5071 and its resolution came to the knowledge of the 21<sup>st</sup> Division from herein respondent himself when he mentioned it so in his Memorandum submitted to the 21<sup>st</sup> Division.

The finding of forum shopping was explained in CA-G.R. SP No. 59859 itself:

In the case at bar, petitioners filed before the Regional Trial Court (Branch 5) complaint against the City Government of Butuan and herein private respondents for "Injunction, Damages, Attorney's Fees with Prayer for the Issuance of Preliminary Injunction and/or Temporary Restraining Order" docketed as Civil Case No. 4919. Petitioners, **alleging ownership over the subject property and pretending to be possessors**, wanted the private respondents enjoined by the court a quo from **allegedly disturbing and interfering with their possession**. Against the city government, petitioners prayed in their Complaint that "defendant City Government be ordered to **pay to plaintiffs the value of said land** including improvements thereof and the expenses of this suit." Having lost their case in the Court a quo, they filed the instant petition with this Court. During the pendency of this petition, petitioners filed before the Regional Trial Court (Branch 3) another Complaint for Specific Performance against the City Government of Butuan, docketed as Civil Case No. 5071 to **compel the City Government to issue them a Certificate of Sale over the same property**.

It must be noted that the first case instituted by the petitioners is founded on their alleged **acquisition of ownership and possession over subject property as buyer in a public auction** conducted and administered by the city government of Butuan. In the second case (Civil Case No. 5071), petitioner Silvestre Plaza is **also alleging that they acquired ownership and possession over the property in question in a public auction** conducted and administered by the City Government of Butuan. The court a quo, in Civil Case No. 4919, **found that petitioners cannot claim legitimate ownership over the subject property because they were not the purchasers in the public auction, but Ms. Virgie Tuason**. To circumvent the ruling of the court a quo and preempt a ruling in this petition, Civil Case No. 5071 was filed by petitioners to **compel the City Government of Butuan to issue a Certificate of Sale**. They succeeded in that effort when RTC-Branch 3 ruled in their favor and order the city government to execute a Certificate of Sale in their favor.

We see a willful abuse of the courts and their processes. In Civil Case No. 5071, petitioners impleaded as defendant therein only the city government of Butuan. It is obvious that such was only a scheme of the petitioners to counter the adverse ruling against them in the first case which found that Silvestre Plaza was not the purchaser of private respondents' land auctioned by the Office of the City Treasurer. Fearing that they could lose in this petition, petitioners searched for a new forum. They sued again the city government – a party that has no more interest in the property and expectedly will no more resist the case to the

hilt – on a cause of action that was practically sideswiped fatally in the ruling of the prior case. Petitioners' strategy paid off when they got a favorable ruling. And believing, albeit erroneously, that through said ruling in the second case, the instant petition has been strengthened, **petitioners filed before this court their 17 November 2003 Memorandum urging this court to grant the herein petition on the basis of the ruling in Civil Case No. 5071.**

In the first and second case, Civil Case Nos. 4919 and 5071, respectively, the city government of Butuan was always a defendant. In both cases, petitioners raised essentially the same issue – **recognition of the source of their "ownership"** over the subject property – as can be gleaned from their allegations therein. xxx.

x x x x

Viewing all these circumstances, it is clear that petitioners are guilty of forum shopping. Not only that the parties in Civil Case Nos. 4919 and 5071 are the same insofar as the city government of Butuan is concerned, there is also **identity of rights asserted and identity of facts alleged and asserted.** In the second case, the city government could have easily moved for its dismissal on the ground of *litis pendentia*. The cause of action in the second case was already ruled upon in the first case, although challenged in this court. Similarly, the relief sought in the second case for the city government to execute a Deed of Sale was indirectly ruled upon in the first case. Thus, all the elements of *litis pendentia* were present.

The Investigating Commissioner adopted *in toto* the arguments made by the 21<sup>st</sup> Division of the Court of Appeals and agreed therewith. It ruled that respondent is **GUILTY** of violating the Code of Professional Responsibility and the Rule on Anti-Forum Shopping and recommended a penalty of **ONE MONTH SUSPENSION** from the practice of law.

In Resolution No. XVIII-2008-285 dated June 5, 2008, the Board of Governors of the Integrated Bar of the Philippines (*IBP*) adopted and approved the said recommendation of the Investigating Commissioner. In Resolution No. XXI-2014-105, the Board of Governors-*IBP*, resolved to deny respondent's Motion for Reconsideration and affirmed Resolution No. XVIII-2008-285.

**FINDING** the recommendation of the *IBP* to be supported by the evidence on record and the applicable laws and rules, and for violation of the Code of Professional Responsibility and the Rule on Anti-Forum Shopping, the Court **ADOPTS** and **AFFIRMS** Resolution No. XVIII-2008-285 dated June 5, 2008 and Resolution No. XXI-2014-105 dated March 21, 2014.



Atty. Agustin C. Tarroza is hereby **SUSPENDED** from the practice of law for a period of **ONE (1) MONTH.**" (adv35)

Very truly yours,

  
**ENRIQUETA E. VIDAL**  
Clerk of Court

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