



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SECOND DIVISION**

**ANASTACIO N. TEODORO III,**  
 Complainant,

**A.C. No. 6760**

Present:

- versus -

CARPIO, *J.*, Chairperson,  
 BRION,  
 DEL CASTILLO,  
 PEREZ, and  
 PERLAS-BERNABE, *JJ.*

Promulgated:

**ATTY. ROMEO S. GONZALES,**  
 Respondent.

**JAN 30 2013** *[Signature]*

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**DECISION**

**BRION, *J.*:**

We resolve this disbarment complaint against Atty. Romeo S. Gonzales for violation of the Code of Professional Responsibility for the forum shopping he allegedly committed.

In his complaint,<sup>1</sup> Anastacio N. Teodoro III related that Atty. Gonzales acted as counsel of Araceli Teodoro-Marcial in two civil cases that the latter filed against him. The first case, Special Proceeding No. 99-95587,<sup>2</sup> involved the settlement of the intestate estate of Manuela Teodoro. While the settlement proceeding was pending, Atty. Gonzales assisted Teodoro-Marcial in filing Civil Case No. 00-99207,<sup>3</sup> for Annulment of Document, Reconveyance and Damages, without indicating the special proceeding earlier filed. The filing of the civil cases, according to Anastacio, was a deliberate act of forum shopping that warrants the disbarment of Atty. Gonzales.

Atty. Gonzales admitted that he assisted Teodoro-Marcial in filing the two cases. He asserted, however, that he did not violate the forum shopping

<sup>1</sup> *Rollo*, pp. 1-8.  
<sup>2</sup> *Id.* at 14-16.  
<sup>3</sup> *Id.* at 19-23.

*[Handwritten mark]*

rule as the cases were not identical in terms of parties, subject matter and remedies. Atty. Gonzales also opined that the complainant only filed the disbarment case to harass him.<sup>4</sup>

### The Investigating Commissioner's Findings

In our Resolution<sup>5</sup> dated March 13, 2006, we referred the disbarment complaint to the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation. In his Report and Recommendation<sup>6</sup> dated July 5, 2010, Commissioner Caesar R. Dulay found Atty. Gonzales administratively liable for forum shopping.

According to Commissioner Dulay, both Special Proceeding No. 99-95587 and Civil Case No. 00-99207 hinged on the same substantial issue, *i.e.*, on whether Manuela held the Malate property in trust for Carmen Teodoro-Reyes, Donato T. Teodoro, Jorge I. Teodoro and Teodoro-Marcial.

In Special Proceeding No. 99-95587, Carmen, Donato, Jorge I. Teodoro, Jorge T. Teodoro and Teodoro-Marcial claimed that they are the heirs of Manuela. During her lifetime, Manuela was the registered owner of a parcel of land located in Malate, Manila. According to the heirs, Manuela held the lot in trust for them, but she sold it to Anastacio and Rogelio Ng. Thus, the heirs prayed for the issuance of letters of administration so that Manuela's properties could be inventoried and settled in accordance with law.

In Civil Case No. 00-99207, the heirs of Manuela claimed to be the beneficiaries of a trust held by Manuela over the same parcel of land contested in Special Proceeding No. 99-95587. They alleged that during her lifetime, Manuela sold a portion of this land to Anastacio. They asked the trial court to annul the Deed of Absolute Sale executed by Manuela; to cancel the resulting Transfer Certificate of Title in the name of Anastacio; and to issue a new one in their names.

The commissioner found that a ruling in either case would result in *res judicata* over the other. Thus, Atty. Gonzales committed forum shopping when he instituted Civil Case No. 00-99207 without indicating that Special Proceeding No. 99-95587 was still pending. In committing forum shopping, Atty. Gonzales disregarded the Supreme Court Circular prohibiting forum shopping and thus violated Canon 1 of the Code of Professional Responsibility.

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<sup>4</sup> *Id.* at 39-45.

<sup>5</sup> *Id.* at 46.

<sup>6</sup> *Id.* at 145-154.

Commissioner Dulay recommended that Atty. Gonzales be suspended for one month from the practice of law, with a warning that a repetition of a similar offense would merit a more severe penalty.

The Board of Governors of the IBP reversed the commissioner's recommendation. In a resolution<sup>7</sup> dated December 10, 2011, the Board of Governors dismissed the case against Atty. Gonzales for lack of merit.

### **The Issue**

The case directly poses to us the question of whether Atty. Gonzales committed forum shopping and thereby violated the Code of Professional Responsibility.

### **The Court's Ruling**

We agree with the findings of the commissioner and accordingly reverse the resolution of the IBP Board of Governors, but we modify the commissioner's recommended penalty to *censure* and a *warning* that another violation would merit a more severe penalty.

Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.<sup>8</sup>

There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (a) identity of parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of relief sought.<sup>9</sup>

Under this test, we find that Atty. Gonzales committed forum shopping when he filed Civil Case No. 00-99207 while Special Proceeding No. 99-95587 was pending.

### **Identity of Parties**

An identity of parties exists in Special Proceeding No. 99-95587 and Civil Case No. 00-99207. In both cases, the initiating parties are the same, to wit: Carmen, Donato, Teodoro-Marcial, Jorge I. Teodoro, Rowena Teodoro, Abigail Teodoro and Jorge T. Teodoro. They represented the same interest in both cases. All claimed to be the legitimate heirs of Manuela and co-owners of the land that she held in trust for them.

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<sup>7</sup> *Id.* at 144.

<sup>8</sup> *Polanco v. Cruz*, G.R. No. 182426, February 13, 2009, 579 SCRA 489, 495.

<sup>9</sup> *Id.* at 495-496.

Meanwhile, Anastacio, the oppositor in Special Proceeding No. 99-95587, is also the sole defendant in Civil Case No. 00-99207. In both cases, he espoused the same interest, as transferee-owner of the lot allegedly held in trust by Manuela.

#### Identity of causes of action

The test of identity of causes of action does not depend on the form of an action taken, but on whether the same evidence would support and establish the former and the present causes of action.<sup>10</sup> The heirs of Manuela cannot avoid the application of *res judicata* by simply varying the form of their action or by adopting a different method of presenting it.<sup>11</sup>

In Special Proceeding No. 99-95587, the trial court held that it had no jurisdiction over the case, as Manuela left no properties at the time of her death. The lot in Malate, Manila, which was the sole property that the heirs of Manuela claim should be included in her estate, has been sold to Rogelio and Anastacio when Manuela was still alive. The trial court did not give credence to their claim that Manuela held the property in trust for them.

Meanwhile, in Civil Case No. 00-99207, the trial court issued an order granting Anastacio's Motion for Demurrer to Evidence. It held that the heirs of Manuela had been unable to prove their claim that Manuela held the lot in trust for their benefit. Neither were they able to prove that the sale of a portion of the lot to Anastacio was void.

In both cases, the issue of whether Manuela held the lot in Malate, Manila in trust had to be decided by the trial court. The initiating parties' claim in the two cases depended on the existence of the trust Manuela allegedly held in their favor. Thus, the evidence necessary to prove their claim was the same.

#### Identity of relief sought

In Special Proceeding No. 99-95587, the heirs of Manuela prayed for the issuance of letters of administration, the liquidation of Manuela's estate, and its distribution among her legal heirs.

Meanwhile, in Civil Case No. 00-99207, the heirs of Manuela asked for the annulment of the deed of absolute sale Manuela executed in favor of

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<sup>10</sup> *Mendoza v. La Mallorca Bus Company*, 172 Phil. 237, 241 (1978).

<sup>11</sup> *Linzag v. CA*, 353 Phil. 506, 518 (1998), citing *Filinvest Credit Corporation v. Intermediate Appellate Court*, G.R. No. 66641 March 6, 1992, 207 SCRA 59, 63; *Sangalang v. Caparas*, L-49749, June 18, 1987, 151 SCRA 53; and *Ibabao v. Intermediate Appellate Court*, L-74848, May 20, 1987, 150 SCRA 76, 85.

Anastacio. They likewise asked the court to cancel the resulting Transfer Certificate of Title issued in favor of the latter, and to issue a new one in their names.

While the reliefs prayed for in the initiatory pleadings of the two cases are different in form, a ruling in one case would have resolved the other, and *vice versa*. To illustrate, had the lot been declared as part of the estate of Manuela in Special Proceeding No. 99-95587, there would have been no need for a decision annulling the sale in Civil Case No. 00-99207. Conversely, had the sale in Civil Case No. 00-99207 been annulled, then the property would go back to the hands of the heirs of Manuela. Placing the property under administration, as prayed for in Special Proceeding No. 99-95587, would have been unnecessary.

Thus, the relief prayed for, the facts upon which it is based, and the parties are substantially similar in the two cases. Since the elements of *litis pendentia* and *res judicata* are present, Atty. Gonzales committed forum shopping when he filed Civil Case No. 00-99207 without indicating that Special Proceeding No. 99-95587 was still pending.

As Commissioner Dulay observed:

Respondent was fully aware, since he was the counsel for both cases, that he raised the issue of trust with respect to the Malate property in the 1999 Letters [of] Administration case and that he was raising the same similar issue of trust in the 2000 annulment case xxx

To advise his client therefore to execute the affidavit of non-forum shopping for the second case (annulment case) and state that there is no pending case involving the same or similar issue would constitute misconduct which should be subject to disciplinary action. It was his duty to advise his client properly, and his failure to do so, in fact his deliberate assertion that there was no falsity in the affidavit is indicative of a predisposition to take lightly his duty as a lawyer to promote respect and obedience to the law.<sup>12</sup>

“Lawyers should be reminded that their primary duty is to assist the courts in the administration of justice. Any conduct [that] tends to delay, impede or obstruct the administration of justice contravenes [this obligation].”<sup>13</sup>

The Court has repeatedly warned lawyers against resorting to forum shopping since the practice clogs the Court dockets and can lead to conflicting rulings.<sup>14</sup> Willful and deliberate forum shopping has been made

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<sup>12</sup> Rollo, pp. 153-154.

<sup>13</sup> *Lim v. Atty. Montano*, 518 Phil. 361, 371 (2006).

<sup>14</sup> *Ibid.*

punishable either as direct or indirect contempt of court in SC Administrative Circular No. 04-94 dated April 1, 1994.<sup>15</sup>

In engaging in forum shopping, Atty. Gonzales violated Canon 1 of the Code of Professional Responsibility which directs lawyers to obey the laws of the land and promote respect for the law and legal processes. He also disregarded his duty to assist in the speedy and efficient administration of justice,<sup>16</sup> and the prohibition against unduly delaying a case by misusing court processes.<sup>17</sup>

To our mind, however, the supreme penalty of disbarment would be very harsh in light of all the circumstances of this case. Neither is the commissioner's recommended penalty of suspension consistent with prior rulings of the Court.

In *Guanzon, Vda. de, etc. v. Judge Yrad, Jr., etc., et al.*<sup>18</sup> we severely censured Renecio Espiritu, the counsel who filed a petition in the Court of Appeals thirty-three days after a similar petition had been filed with the Supreme Court. We also found him guilty of direct contempt.

The present case finds favorable comparison with *Guanzon*. Like Espiritu, Atty. Gonzales misused court processes in contravention of the express rule against forum shopping. We held then that Espiritu should be penalized and we imposed the penalty of censure —the penalty usually imposed for an isolated act of misconduct of a lesser nature.<sup>19</sup>

Lawyers are also censured for minor infractions against the lawyer's duty to the Court or the client.<sup>20</sup> As earlier stated, Atty. Gonzales' act of forum shopping disregarded his duty to obey and promote respect for the law and legal processes, as well as the prohibition against unduly delaying a case by misusing court processes.<sup>21</sup> It also violated his duty as an officer of the court to assist in the speedy and efficient administration of justice.<sup>22</sup>

**WHEREFORE**, we find the basis for the complaint meritorious and accordingly **CENSURE** Atty. Romeo S. Gonzales for resorting to forum shopping. He is **WARNED** that any future violation of his duties as a lawyer will be dealt with more severely. A copy of this reprimand should be

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<sup>15</sup> Additional requisites for civil complaints, petitions and other initiatory pleadings filed in all courts and agencies, other than the Supreme Court and the Court of Appeals, to prevent forum shopping or multiple filing of such pleadings.

<sup>16</sup> Canon 12, Code of Professional Responsibility.

<sup>17</sup> Rule 12.04 of Canon 12, Code of Professional Responsibility.

<sup>18</sup> 218 Phil. 692, 697 (1984).

<sup>19</sup> *Advincula v. Macabata*, A.C. No. 7204, March 7, 2007, 517 SCRA 600, 617.

<sup>20</sup> *Ibid.*

<sup>21</sup> Rule 12.04 of Canon 12, Code of Professional Responsibility.

<sup>22</sup> Canon 12, Code of Professional Responsibility.


attached to Atty. Romeo S. Gonzales' personal file in the Office of the Bar Confidant.

**SO ORDERED.**

  
**ARTURO D. BRION**  
Associate Justice

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice