



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 2, 2023**, which reads as follows:*

A.C. No. 13733 – MARIBEL YU CANA, complainant, versus ATTY. ROGELIO C. NICANDRO, respondent.

Before the Court is a Complaint-Affidavit¹ dated December 21, 2022, which was filed directly with the Supreme Court by Maribel Yu Cana (**Cana**) against Atty. Rogelio C. Nicandro (**Atty. Nicandro**). Cana seeks the disbarment of Atty. Nicandro for his alleged acts of “ordering, conspiring, consenting, allowing, and committing the act of depriving her from [*sic*] her right to inspect corporate documents.”² Specifically, she accuses Atty. Nicandro of violating Rules 1.01 and 1.02 of the Code of Professional Responsibility and the lawyer’s oath.³

The Complaint lacks merit.

Although the Rules of Court allow for direct resort to the Court in cases seeking the disbarment of a lawyer, the case may be dismissed upon the finding that the Complaint does not merit action.⁴ The Court has consistently ruled that mere allegations are not sufficient to prove liability, there must also be substantial evidence presented:

Of course, accusations remain mere allegations if unsupported by the requisite quantum of proof. In disciplinary cases involving members of the Bar, substantial evidence is necessary to justify the imposition of administrative penalty. Substantial evidence means “that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.” It is “more in keeping with the primo[r]dial purpose of and essential considerations attending this type of cases.”⁵ (Citations omitted)

¹ *Rollo* pp. 2–10.

² *Id.* at 7, Complaint-Affidavit.

³ *Id.* at 2, Complaint-Affidavit.

⁴ RULES OF COURT, Rule 138-B, sec 2.

⁵ *Partsch v. Vitorillo*, A.C. No. 10897, January 4, 2022.

Here, Cana centers her Complaint on the alleged denial of her right to inspect the proxy forms submitted to Antel Platinum Tower Condominium Association Inc. (APTCAI), of which she is a member. Specifically, Cana asserts that Atty. Nicandro violated her right to inspection of the corporate records. Despite this, she scarcely mentions Atty. Nicandro except to state that he was the presiding officer of the Annual General Meeting where she first requested the forms. In fact, she admits that Atty. Nicandro presented to her the proxy forms requested during the meeting, but with the names of the principals covered, based on the duty to protect the privacy of the members.

Aside from this, she repeatedly indicated that Atty. Nicandro, as the presiding officer of the meeting, acted with the Board during the meeting. When Cana later filed a request for inspection, she dealt primarily with APTCAI's Administrative Operations Head, Ariston "Bong" Linuag in pursuing her request for inspection. She attached several emails and letters to her Complaint-Affidavit, none of which were addressed to Atty. Nicandro. Other than her mere allegation, nothing in the evidence points to Atty. Nicandro preventing her from exercising her right to inspection. Based on the records, the proper respondent should be APTCAI as a corporation, or its Board.

Even assuming Atty. Nicandro is the proper respondent, the case at hand is clearly an intra-corporate dispute and not an administrative issue. To be clear, APTCAI did not flatly deny her request for inspection nor did it refuse to present her the documents she sought. True, APTCAI covered the names of the principals in the proxy forms, but this was to protect the privacy of its members. Hence the actual issue here is whether or not the corporation may conceal the names of the principals of proxies. This issue can only be resolved through an interpretation of corporation law, upon the filing of the proper pleading. It cannot be resolved by the Court in an administrative case on the basis of a Complaint-Affidavit.

All told, Cana did not present evidence sufficient to merit action on her Complaint-Affidavit. While the Court will not rule on the propriety of APTCAI's privacy policy, it is certain that the mere fact that Atty. Nicandro sits on the Board is insufficient to prove his liability. In *Sampana v. Angara*,⁶ the Court held that misconduct must be clearly established before a lawyer may be disbarred:

The power to disbar or suspend a lawyer should be used with utmost caution and only for serious reasons so as not to unjustly deprive him of his means of livelihood and distinct reputation in the society. It must be exercised only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. In disbarment

⁶ 531 Phil. 6 (2006).

proceedings, the complainant has the burden of proving his case against respondent.⁷

WHEREFORE, the instant Complaint against Atty. Rogelio C. Nicandro is **DISMISSED** for lack of merit.

SO ORDERED. (Dimaampao, *J.*, on official business.)

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *Jan 11/24*

Ms. Maribel Yu Cana
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Unit 1002 Antel Platinum Tower
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1227 Makati City

Atty. Rogelio C. Nicandro
Respondent
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⁷ *Id.* at 28–29.