



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**CONCHITA A. BALTAZAR,
ROLANDO SAN PEDRO, ALICIA
EULALIO-RAMOS, SOLEDAD A.
FAJARDO AND ENCARNACION A.
FERNANDEZ,**

Complainants,

- versus -

A.C. No. 9091

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

ATTY. JUAN B. BAÑEZ, JR.,

Respondent.

Promulgated:

DEC 11 2013

X ----- X

RESOLUTION

SERENO, *CJ*:

Complainants are the owners of three parcels of land located in Dinalupihan, Bataan.¹ On 4 September 2002, they entered into an agreement with Gerry R. Fevidal (Fevidal), a subdivision developer. In that agreement, they stood to be paid ₱35,000,000 for all the lots that would be sold in the subdivision.² For that purpose, they executed a Special Power of Attorney authorizing Fevidal to enter into all agreements concerning the parcels of land and to sign those agreements on their behalf.³

Fevidal did not update complainants about the status of the subdivision project and failed to account for the titles to the subdivided land.⁴ Complainants also found that he had sold a number of parcels to third parties, but that he did not turn the proceeds over to them. Neither were complainants invited to the ceremonial opening of the subdivision project.⁵

¹ *Rollo* (Vol. I), pp. 3-4.

² *Id.* at 5-6.

³ *Id.* at 6-7.

⁴ *Rollo*, (Vol. II), p. 127.

⁵ *Id.*

Thus, on 23 August 2005, they revoked the Special Power of Attorney they had previously executed in his favor.⁶

Complainants subsequently agreed to settle with Fevidal for the amount of ₱10,000,000, but the latter again failed to pay them.⁷ Complainants engaged the professional services of respondent for the purpose of assisting them in the preparation of a settlement agreement.⁸ Instead of drafting a written settlement, respondent encouraged them to institute actions against Fevidal in order to recover their properties.

Complainants then signed a contract of legal services,⁹ in which it was agreed that they would not pay acceptance and appearance fees to respondent, but that the docket fees would instead be shared by the parties. Under the contract, complainants would pay respondent 50% of whatever would be recovered of the properties.

In preparation for the filing of an action against Fevidal, respondent prepared and notarized an Affidavit of Adverse Claim, seeking to annotate the claim of complainants to at least 195 titles in the possession of Fevidal.¹⁰ A certain Luzviminda Andrade (Andrade) was tasked to submit the Affidavit of Adverse Claim to the Register of Deeds of Bataan.¹¹ The costs for the annotation of the adverse claim were paid by respondent. Unknown to him, the adverse claim was held in abeyance, because Fevidal got wind of it and convinced complainants to agree to another settlement.¹²

Meanwhile, on behalf of complainants, and after sending Fevidal a demand letter dated 10 July 2006, respondent filed a complaint for annulment, cancellation and revalidation of titles, and damages against Fevidal before the Regional Trial Court (RTC) of Bataan on 13 October 2006.¹³

Complainants found it hard to wait for the outcome of the action. Thus, they terminated the services of respondent on 8 June 2007, withdrew their complaint against Fevidal on 9 June 2007, and finalized their amicable settlement with him on 5 July 2007.¹⁴

Respondent filed a Manifestation and Opposition¹⁵ dated 20 July 2007 before the RTC, alleging that the termination of his services and withdrawal

⁶ Id. at 126.

⁷ Id. at 263.

⁸ *Rollo* (Vol. I), p. 7.

⁹ Id. at 25.

¹⁰ *Rollo* (Vol. II), pp. 102-105.

¹¹ Id. at 7-8.

¹² Id. at 264.

¹³ Id. at 8-9.

¹⁴ *Rollo* (Vol. I), pp. 11-13.

¹⁵ *Rollo* (Vol. II), pp. 187-191.

of the complaint had been done with the intent of defrauding counsel. On the same date, he filed a Motion for Recording of Attorney's Charging Lien in the Records of the Above-Captioned Cases.¹⁶ When the RTC granted the withdrawal of the complaint,¹⁷ he filed a Manifestation and Motion for Reconsideration.¹⁸

After an exchange of pleadings between respondent and Fevidal, with the latter denying the former's allegation of collusion,¹⁹ complainants sought the suspension/disbarment of respondent through a Complaint²⁰ filed before the Integrated Bar of the Philippines (IBP) on 14 November 2007. Complainants alleged that they were uneducated and underprivileged, and could not taste the fruits of their properties because the disposition thereof was "now clothed with legal problems" brought about by respondent.²¹ In their complaint, they alleged that respondent had violated Canons 1.01,²² 1.03,²³ 1.04,²⁴ 12.02,²⁵ 15.05,²⁶ 18.04,²⁷ and 20.04²⁸ of the Code of Professional Responsibility.

On 14 August 2008, the IBP Commission on Bar Discipline adopted and approved the Report and Recommendation²⁹ of the investigating commissioner. It suspended respondent from the practice of law for a period of one year for entering into a champertous agreement.³⁰ On 26 June 2011, it denied his motion for reconsideration.

On 26 November 2012, this Court noted the Indorsement of the IBP Commission on Bar Discipline, as well as respondent's second motion for reconsideration.

We find that respondent did not violate any of the canons cited by complainants. In fact, we have reason to believe that complainants only filed the instant complaint against him at the prodding of Fevidal.

¹⁶ Id. at 197-203.

¹⁷ Id. at 209.

¹⁸ Id. at 212-222.

¹⁹ Id. at 237-238.

²⁰ *Rollo* (Vol. I), pp. 1-18.

²¹ Id. at 2.

²² A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

²³ A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

²⁴ A lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement.

²⁵ A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

²⁶ A lawyer when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

²⁷ A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

²⁸ A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

²⁹ *Rollo* (Vol. IV), pp. 2-12.

³⁰ Id. at 1.

Respondent cannot be faulted for advising complainants to file an action against Fevidal to recover their properties, instead of agreeing to a settlement of ₱10,000,000 – a measly amount compared to that in the original agreement, under which Fevidal undertook to pay complainants the amount of ₱35,000,000. Lawyers have a sworn duty and responsibility to protect the interest of any prospective client and pursue the ends of justice.³¹ Any lawyer worth his salt would advise complainants against the abuses of Fevidal under the circumstances, and we cannot countenance an administrative complaint against a lawyer only because he performed a duty imposed on him by his oath.

The claim of complainants that they were not informed of the status of the case is more appropriately laid at their door rather than at that of respondent. He was never informed that they had held in abeyance the filing of the adverse claim. Neither was he informed of the brewing amicable settlement between complainants and Fevidal. We also find it very hard to believe that while complainants received various amounts as loans from respondent from August 2006 to June 2007,³² they could not spare even a few minutes to ask about the status of the case. We shall discuss this more below.

As regards the claim that respondent refused to “patch up” with Fevidal despite the pleas of complainants, we note the latter’s *Sinumpaang Salaysay* dated 24 September 2007, in which they admitted that they could not convince Fevidal to meet with respondent to agree to a settlement.³³

Finally, complainants apparently refer to the motion of respondent for the recording of his attorney’s charging lien as the “legal problem” preventing them from enjoying the fruits of their property.

Section 26, Rule 138 of the Rules of Court allows an attorney to intervene in a case to protect his rights concerning the payment of his compensation. According to the discretion of the court, the attorney shall have a lien upon all judgments for the payment of money rendered in a case in which his services have been retained by the client.

We recently upheld the right of counsel to intervene in proceedings for the recording of their charging lien. In *Malvar v. KFPI*,³⁴ we granted counsel’s motion to intervene in the case after petitioner therein terminated his services without justifiable cause. Furthermore, after finding that petitioner and respondent had colluded in order to deprive counsel of his

³¹ *Manzano v. Soriano*, A.C. No. 8051, 7 April 2009, 584 SCRA 1.

³² *Rollo* (Vol. II), pp. 90-101.

³³ *Id.* at 264.

³⁴ G.R. No. 183952, 9 September 2013.

fees, we ordered the parties to jointly and severally pay counsel the stipulated contingent fees.

Thus, the determination of whether respondent is entitled to the charging lien is based on the discretion of the court before which the lien is presented. The compensation of lawyers for professional services rendered is subject to the supervision of the court, not only to guarantee that the fees they charge remain reasonable and commensurate with the services they have actually rendered, but to maintain the dignity and integrity of the legal profession as well.³⁵ In any case, an attorney is entitled to be paid reasonable compensation for his services.³⁶ That he had pursued its payment in the appropriate venue does not make him liable for disciplinary action.

Notwithstanding the foregoing, respondent is not without fault. Indeed, we find that the contract for legal services he has executed with complainants is in the nature of a champertous contract – an agreement whereby an attorney undertakes to pay the expenses of the proceedings to enforce the client's rights in exchange for some bargain to have a part of the thing in dispute.³⁷ Such contracts are contrary to public policy³⁸ and are thus void or inexistent.³⁹ They are also contrary to Canon 16.04 of the Code of Professional Responsibility, which states that lawyers shall not lend money to a client, except when in the interest of justice, they have to advance necessary expenses in a legal matter they are handling for the client.

A reading of the contract for legal services⁴⁰ shows that respondent agreed to pay for at least half of the expense for the docket fees. He also paid for the whole amount needed for the recording of complainants' adverse claim.

While lawyers may advance the necessary expenses in a legal matter they are handling in order to safeguard their client's rights, it is imperative

³⁵ *Municipality of Tiwi v. Betito*, G.R. No. 171873, 9 July 2010, 624 SCRA 623.

³⁶ RULES OF COURT, Rule 138, Sec. 24.

³⁷ *Bautista v. Gonzales*, 261 Phil. 266, 281 (1990).

³⁸ *Id.*

³⁹ CIVIL CODE, Art. 1409(1).

⁴⁰ *KAMI, na nakalagda sa ilalim nito ay hinihirang and tanggapan ng BAÑEZ, BAÑEZ & ASSOCIATES upang siyang humawak sa lahat ng kaso na aming isasampa laban kay Gerry R. Fevidal at iba pang kasama nito, hinggil sa mga parsela ng lupa na matatagpuan sa Bo. Pinulot, Hermosa, Bataan, na paw[a]ng pag-aari ni Dominador Alejo, ayon sa mga sumusunod na alituntunin:*

1. Na kami ay hindi magbabayad ng acceptance fee;
2. Na kami ay hindi magbabayad ng appearance fee tuwing may hearing;
3. Na paghahatian namin ng aming abogado ang magagastos bilang docket fee o bayad sa husgado sa pagsasampa ng kaso;
4. Na aming babayaran ang aming nasabing abogado ng katumbas ng 50% ng anumang marerecover o mababawi namin sa mga ari-ariang nakasaad sa *Extrajudicial Settlement of Estate* na isinagawa noong Abril 12, 1986, gaya Ng mga sumusunod: [1] TCT No. T-18653 [79,885 sq.m.]; [2] TCT No. T-21447 [80,555 sq.m.] at [3] 38847 [35,380 sq.m.], at ito ay matapos bawasin ang 10% ng anumang marerecover bilang parte ni Luzviminda Andrade;
5. Ang anumang bayarin sa buwis para sa nasabing mga parsela ng lupa ay aming sasagutin.

that the advances be subject to reimbursement.⁴¹ The purpose is to avoid a situation in which a lawyer acquires a personal stake in the client's cause. Regrettably, nowhere in the contract for legal services is it stated that the expenses of litigation advanced by respondent shall be subject to reimbursement by complainants.


In addition, respondent gave various amounts as cash advances (*bali*), gasoline and transportation allowance to them for the duration of their attorney-client relationship. In fact, he admits that the cash advances were in the nature of personal loans that he extended to complainants.⁴²

Clearly, respondent lost sight of his responsibility as a lawyer in balancing the client's interests with the ethical standards of his profession. Considering the surrounding circumstances in this case, an admonition shall suffice to remind him that however dire the needs of the clients, a lawyer must always avoid any appearance of impropriety to preserve the integrity of the profession.

WHEREFORE, Attorney Juan B. Bañez, Jr. is hereby **ADMONISHED** for advancing the litigation expenses in a legal matter he handled for a client without providing for terms of reimbursement and lending money to his client, in violation of Canon 16.04 of the Code of Professional Responsibility. He is sternly warned that a repetition of the same or a similar act would be dealt with more severely.

Let a copy of this Resolution be attached to the personal record of Attorney Bañez, Jr.

SO ORDERED.



MARIA LOURDES P. A. SERENO

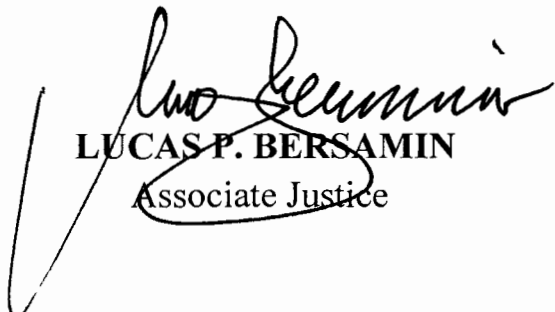
Chief Justice, Chairperson

⁴¹ Supra note 38.

⁴² *Rollo* (Vol. IV), p. 33.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice