

OCA CIRCULAR NO. 31-2004, February 20, 2004

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TO:

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI' A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS; MUNICIPAL CIRCUIT TRIAL COURTS, SHARI' A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. MARCIAL F. LOPEZ

For the information and guidance of all concerned, quoted hereunder is the, Resolution of the Court En Bane August 14, 2003 in Administrative Case No. 4650 entitled "Rosalina Biascan vs. Atty. Marcial F. Lopez", to wit:

"This Administrative case stems from a verified complaint[1] for disbarment, filed on October 4, 1996, by complaint Rosalina Biascan against the respondent Atty. Marcial F. Lopez for alleged fraud or misrepresentation, breach of his duty as an officer of the court, and betrayal of his oath as a lawyer amounting to gross misconduct, which renders him unfit to continue is the practice of law.

Subject of the complaint in a 600-square meter lot located between Constancia and Miguelin Streets in Sampaloc, Manila. Said property was originally covered by transfer Certificate of Title (TCT) No. 34127 in the name of Florencio Biascan. The latter died intestate, leaving behind two parcels namely: the lot in Sampaloc, Manila, and other parcel in Novaliches, Quezon City, covered by TCT No. 87068.

In her complaint, Rosalina Biascan avers that she is the court-appointed admirtistratix of the estate of her deceased father, Florencio Biascan. That estate is the subject of Special Proceedings No. 98037 entitled "In the Matter of the Intestate Estate of the Deceased Timpotea Zulueta and Florencio Biascan" pending before the Regional Trial Court (RTC) of Manila, - Branch 4. Pursuant, to her appointment, she filed -her Inventory and Appraisal[2] Report sometime in November 1975.

In August 1977, respondent entered his appearance in the intestate proceedings as counsel for an oppositor, Maria Manuel Biascan (now deceased).[3]

In an Order[4] dated April 2, 1981, the RTC declared complaint and her brother, German Biascan, heirs of the late Florencio. Maria Manuel Biascan then, filed a Motion for Reconsideration[5] on June 6, 1981, but the trial court denied said motion on April 30, 1985.[6] Meanwhile, in complete disregard of the intestate proceedings and without, knowledge and approval of the: lower court or complainant and her brother, Maria Manuel Biascan executed an Affidavit of Self-Adjudication[7] on June 20, 1983 where she falsely, represented herself as the sole heir of the late Florencio Biascan. On July 12, 1983, she then presented the Affidavit of Self-adjudication to the Register of Deeds of Manila, as a result of which TCT No. 34127 was cancelled and TCT No. 155384 issued in her name.

Complainant further averred that on July 24, 1990, without v the approval of the intestate court and, taking advantage, of the aforementioned fraud, respondent Lopez registered with the Register of Deeds a Deed of Assignment[8] dated December 22, 1977, which Maria Manuel Biascaa had executed in his favor. In that deed, Maria Manuel Biascan ceded to respondent 210 square meters of the 600-square meter land now covered by TCT No 155384 Thereafter, the Register of Deeds of Manila issued TCT No 193790 covering ceded 210 square meters, in respondent's name.[9]

On June 15, 1992, respondent sold the 210-square meter lot covered by TCT No. 193790 to the Spouses Danilo and Corazon Arganozaa in whose favor TCT No. 208601 was issued.[10]

According to complainant, all the foregoing transfers occurred while Special Proceedings No. 98037 was still pending, but she discovered the transfers, only in February 1993 after inquiries on . her behalf were made with the Registries of Deeds, of Manila and Caloocan.[11] Suits for the recovery of the properties are pending with the Regional Trial Courts of Manila, and Caloocan.[12]

In his Comment/Answer[13] filed on November 17, 1998 , respondent Lopez denies committing any fraud, misconduct, or breach, of duty to the, court, and asserts he acted in good faith. According to him, what complainant Rosalina Biascan reported in her Inventory and Appraisal report was a parcel of land covered by TCT No. 24127 and not the Sampaloc property covered by TCT No. 34127. Also, his acquisition of subject property and the resulting issuance of TCT No. 193790 in his name was valid because the land was payment for his legal services under a valid contingent fee contract Respondent claims that Maria Manuel Biascan offered to pay him 35% of the area of TCT No. 155384 for his legal services. Since there was no notice of lis pendens on TCT No. 155384, he accepted the offer and the Deed of Assignment was executed between them.[14]

Respondent further asserts that complainant is guilty of laches, as she failed to act swiftly to protect her alleged interest over the subject property. He points out that from June 2, 1975, the date complainant filed the petition for settlement and administration of the intestate estate of Florencio Biascan, up to May 28, 1983 or for . approximately eight (8) years, complainant failed to assert her rights as owner of the property by either registering a claim to the subject property or filing a case for recovery thereof.

Finally, respondent prayed for the suspension of the instant administrative case on the ground that the recovery suits pending before the RTCs of Manila and Galodcan raise issues that must first be resolved before the instant complaint can proceed; otherwise, there might be conflicting fir dings between said lower courts and this Court.

In our Resolution[15] of March 1, 1999 , we referred the instant complaint to the. Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

On-August 3, 2002, the IBP Board of Governors passed Resolution .No. XV-2002-394, the full text of which reads as follows:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that it misconduct which have caused damage and prejudice to complaint and her brother, respondent is hereby SUSPENDED from the practice of law for three (3) years.[16]

This Resolution is now before this Court for confirmation.

At the outset, we note that there appears to be some concision between the parties on whether the original TCT covering the property in question was TCT No. 24127 or TCT No. 34127. Resort to the records show, however, that both parties are in fact referring to the lot located between Constancia and Miguelin Streets in Sampaloc,

Manila.

On the issue of respondent's liability, this Court agrees with the findings of the IBP Board of Governors.

It is clear from the records that when respondent entered his appearance in Special Proceedings No. 98037 as counsel for Maria Manuel Biascan in August 1977, complainant had already filed her Inventory and Appraisal Report dated November 22, 1975, which listed the realty covered by TCT No. 34127, as one of the properties forming part of the Estate of Florencio Biascan. As counsel for an opposite, respondent must have gone over the records of Special Proceedings No. 98037, which included the aforesaid Inventory and Appraisal Report. Also, the Deed of Assignment itself stated that TCT.No.34127 was registered in Florencio Biascan's name and was the subject of Special Proceedings No. 98037. Clearly therefore, when Maria Manuel Biascan executed the Deed of Assignment in December 22, 1977 to cover respondent's contingent fees, respondent had actual knowledge that the lot subject of said deed formed part of the estate of Florencio Biascan. Notwithstanding this and the fact that Special Proceedings No. 98037 was still pending,[17] respondent registered the Deed of Assignment in his -favor on July 24, 1990 and caused the transfer of title over the part of the land Maria Manuel Biascan assigned to Mm. In so doing, the respondent transgressed Article 1491[18] of the Civil Code expressly prohibiting a lawyer from acquiring property or rights that may be the object of any litigation in which they, may take" part by virtue of their profession.

Respondent's assertion that the assignment was made pursuant to a contingent fee contract will not exonerate him. True, a contract for a contingent fee is generally not covered by Article 1491 and is valid because the transfer or assignment of the property in litigation takes effect only after the finality of a favorable judgment[19] However, as aforesaid respondent caused the transfer of the subject property in his name during the pendency of Special Proceedings No. 98037. Thus, the prohibition in Article 1491. clearly applies.[20] Respondent is, therefore, liable for malpractice.[21]

As a member of the bar, respondent is strictly mandated to comply with the Attorney's Oath as well as the Code of Professional Responsibility,[22] both of which require him to obey the laws as well as the legal orders of duly constituted authorities. The transgression of any, provision of law by a lawyer is a reprehensible act, which the Court will not countenance.[23]

Likewise, respondent defied the tenor and intent of the trial court's Order of April 2, 1981 when on July 24, 1990, he proceeded to register the Deed of Assignment and caused the issuance of a new TCT in his name. Note that respondent proceeded with such registration of property included in the Estate of Florencio Biascan, despite the fact that the trial court had ruled that aside from Maria Manuel Biascan, complainant and her brother were legal heirs of Florencio Biascan. That the Order 4ate4 April 2, 1981 was the subject of an appeal and had not become final at the time he acquired title to the property does not change the fact that there, is such an; Order. As a .lawyer and an officer of the court, respondent should have respected said Order[24] and refrained from doing any act, which would have rendered such Order ineffectual. It bears repeating that a lawyer should uphold the dignity and authority of the court.[25] His actions violate Canon 1 of the Code of Professional Responsibility., that requires every member of the, bar to promote respect for law and legal processes.[26]

Finally, respondent's contention that the result of the recovery suits should be awaited before any action is taken in the instant Complaint fails to persuade us. What is addressed in this case is whether respondent knowingly. acquired an interest over property subject of Special Proceedings No. 98037 to the damage and prejudice of the persons lawfully, entitled to said property as legal heirs and in violation of respondent's oath as a lawyer and his duty V as an officer of the court. The question of whether complainant. herein, is entitled to recovery is not in issue. Thus, the outcome of the recovery suits has no bearing in the instant case.

On the matter of the imposable penalty, however, ibis Court is unable to agree with the recommendation of the IBP Board of .Governors, it being too harsh and not in accord with jurisprudence. In Valencia v. Cabanting,[27]Bautista v. Gonzates,[28] and Ordonio v. Eduarte[29] all involving violations of Article 1491 of the Civil Code, this Court imposed the penalty of suspension of six (6) months on the respondents therein. Considering the nature of the acts of professional misconduct respondent committed, and the facts and circumstances of this case, the Court finds, sufficient grounds to suspend respondent from the practice of law for six (6) months.

WHEREFORE, respondent ATTY, MARCIAL F. LOPEZ is declared LIABLE for SERIOUS MISCONDUCT as a lawyer. He is ordered SUSPENDED from the practice of law for SIX (6) MONTHS, effective upon receipt of this Resolution, with a STERN WARNING' that any future misconduct on respondent's part will be dealt with more severely. Let copies of this Resolution be circulated soonest to all courts, tribunals, and quasi-judicial agencies of the country for their information and guidance, and spread in the personal record of respondent, Atty. Marcial F. Lopez.

SO ORDERED."

Copy of this resolution was served upon the respondent thru his counsel, on September 3, 2003, under Registry Return Receipt No. 27101. Respondent's motion for reconsideration of this Resolution was denied with finality on 17 November 2003.

__20__ February 2004.

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PRESBITERO J. VELASCO, JR.

Court Administrator

[1]Rollo.pp. 1-7.

[2]Id. at 10-11.

[3] Id. at 2.

[4] Id. at 12-18.

[5] Id. at 19-21.

[6] Id. at 24.

[7] Id. at 22-23.

[8] Id. at 30-32, 127.

[9] Id. at 4, 33-34.

[10]Id. at 4, 35-38.

[11]Id. at 5.

[12] Ibid.

[13] Id. at 113.120.

[14] Id. at 117.

[15] Id. at 122.

[16] Id. at 124.

[17] Id. at 5, 115.

[18] ART. 1491. The foil owing, persons cannot acquire, purchase, even at a public or judicial auction, either in person or through the mediation of another:

(1) The guardian, the property of the person or persons who may be. under his guardianship;

(2) Agents, the property whose administration or sale may have been entrusted to them unless the consent of the principal has been given;

(3) Executors and administrators, the property of the estate under administration;

(4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government owned or controlled corporation, or institution, the administration of which : has been entrusted to them; this provision shall apply to judges and government experts in any manner whatsoever take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the' administration of justice, the property and rights litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise, their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which the object of any litigation in which they may-take part by virtue of their profession (*italics for emphasis*).

(6) Any other special disqualified by law.

[19] Director of Lands v. Ababa, G.R. No. L-26096, 27 February 1979, 88 SCRA 513, 520.

[20] See Director of Lands v. Ababa, supra, at 519 citing Vda. De Laig vs. Court of Appeals, G.R. No. L-26882, 21 November 1978, 86SCRA641

[21] See Valencia v. Cabaziting, A.C.°Nos. 1302, 1391 & 1543, 26 April 1991 , 196 SCRA 302, 308.

[22]Gamillav. Mariño, Jr.; A.C. No. 4763, 20 March 2003 , p. 14.

[23]Bautista.v. Gonzalcs. AM. No. 1625. 12 February 1990 , 182 SCRA 151,160.

[24]De Leon v. Torres, 99 Phil. 462, 466 (1956).

[25]Surigao Minerds Reservation Board y. Clcribe!, G.R. No; L-27072, 9 January 1970 ,31 SCRA 1, 16-17.

[26] CANON 1.- A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes. ..See also CANON 11.- A. lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

[27] Supra, note 21 at 311.

[28] Supra, note 23 at 165.

[28] A. M. No. 3216, 16 March 1992, 207 SCRA 229, 233.

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