

CLARA TRAJANO AND MARISSA TRAJANO, PETITIONERS, VS. HON. FLORO ALEJO, AS PRESIDING JUDGE RTC OF VALENZUELA CITY, BR. 172, ROMAN CATHOLIC BISHOP OF MALOLOS, INC. AND MSGR. EPITAC...

Ponente: BARRIOS, J.

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BARRIOS, J.:

What is disputed is the claimed privileged communication that a litigant has raised against the presentation of its quondam counsel as a witness of its adversary.

The petitioners Clara Trajano and Marissa Trajano (hereafter the petitioners for brevity), by this petition for certiorari ask that the Orders dated August 5, 2002 and April 21, 2003 issued by the Regional Trial Court of Valenzuela City (or RTC) in its Civil Case No. 5078-V-96, barring the presentation of their intended witness, be reversed and set aside.

This Civil Case No. 5078-V-96 for Specific Performance and Damages was filed by the spouses Romeo Trajano and Clara Trajano (or the Trajanos unless individualized) against the respondents Roman Catholic Bishop of Malolos, Inc. (or the Bishop of Malolos) and Msgr. Epitacio Castro. The Trajanos alleged that they are the owners of Lot A-2-B, a 159 square meters parcel of land covered by Transfer Certificate of Title No. V-22501 of the Register of Deeds of Valenzuela, which they acquired by purchase from the Bishop of Malolos. They filed the suit because despite repeated demands, the Bishop of Malolos failed and refused to deliver to them the title to the subject property.

In the course of the proceedings, the Trajanos offered to present as their last witness Atty. Cresenciano Santiago (or Atty. Santiago), the former counsel of the Bishop of Malolos. He was to corroborate Romeo Trajano's testimony that the Bishop of Malolos offered to lease to them the subject lot for fifty (50) years or to give them another lot in its stead. The Bishop of Malolos objected claiming that this is a privileged communication between lawyer and client, and that Atty. Santiago is still retained as one of its lawyers and is actually handling several of its other cases. It added that even assuming that Atty. Santiago was no longer its lawyer, he still needs to have the consent of the Bishop of Malolos before he can testify and disclose on matters covered by their lawyer-client relationship.

In its Order of March 26, 2002, the RTC granted the Trajanos' motion to admit Atty. Santiago as a witness, ruling that:

WHEREFORE, the instant motion is hereby granted and the plaintiffs are allowed to call Atty. Cresenciano Santiago as witness for the plaintiffs.

SO ORDERED. (p. 37, rollo)

The Bishop of Malolos moved for its reconsideration, and this was granted by the RTC in the assailed Order of August 5, 2002 disposing that:

WHEREFORE, the instant motion is hereby granted and the Order of this Court issued on March 26, 2002 allowing Atty. Santiago to testify for the plaintiffs is reconsidered and set aside.

The scheduled hearing on September 26, 2002 at 8:30 a.m. stands.

SO ORDERED. (p. 46, rollo)

It was now the turn of the Trajanos to ask for a reconsideration. It contended that the rule on privileged communication between lawyer and client will not be violated because Atty. Santiago's testimony will center only on the proposal he made to them in behalf of the Bishop of Malolos prior to the filing of the case. The motion was denied in the second assailed Order dated April 21, 2003.

Meantime, Romeo Trajano died and was substituted by the petitioners as plaintiffs in the case a quo.

Hence, the petitioners are now on this recourse, contending that:

THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT DISALLOWED THE PRESENTATION OF ATTY. CRESENCIANO SANTIAGO ON THE GROUND OF PRIVILEGED COMMUNICATION. (p. 14, rollo)

At the outset, We stress the rule that in certiorari proceedings under Rule 65 of the Revised Rules of Court, the query is limited to the determination of whether or not public respondent acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed Orders (vide: *Philippine Airlines, Inc. vs. NLRC*, 337 SCRA 286). We find neither lack of jurisdiction nor grave abuse of discretion in this case.

An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity (Section 24[b], Rule 130 of the Rules of Court). Hence, any communication made to an attorney in the course of any personal employment, relating to the subject thereof, and which may be supposed to be drawn out in consequence of the relation in which the parties stand to each other, are under the seal of confidence and entitled to protection as privileged communication (vide: *Regala vs. Sandiganbayan*, 262 SCRA 122). Moreover, the duty of a lawyer to protect his client's confidences outlasts the lawyer's employment or it extends even after the termination of the relationship (vide: *Lorenzana Food Corporation vs. Daria*, 197 SCRA 428).

In this case, the testimony or information sought to be drawn from Atty. Santiago is privileged. The petitioners are asking him to testify on his dealings with them, particularly the alleged offer or proposal he made in behalf of the Bishop of Malolos for the amicable settlement of the case. Such is protected by the privilege since it was obtained by Atty. Santiago in reference to the disputed property and arose out of the lawyer-client relationship between him and the Bishop of Malolos. More importantly, Atty. Santiago's transaction or proposal with the petitioners, if indeed there was any, was required by and emanated from the exercise and performance of his role as the lawyer for the Bishop of Malolos. In the face of an objection, he cannot therefore be called to testify on confidential matters arising out of the lawyer-client privilege and relationship between them. It will not be amiss to mention too that this lawyer's proposed testimony is not in the nature of a *sine qua non* for this was already covered by the testimony of the since deceased Romeo Trajano.

Certiorari under Rule 65 will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction is clearly shown. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility (*Punongbayan*

vs. Punongbayan, 446 SCRA 100). Finding no basis for the issuance of the writ -

WHEREFORE, the Petition is DENIED DUE COURSE and DISMISSED.
SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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