

IN THE MATTER OF THE INVESTIGATION OF CERTAIN CHARGES PREFERRED BY SEVERINO CAOIBES AGAINST LUCIANO DE LA ROSA, ATTORNEY AND COUNSELOR AT LAW.

Special proceeding. March 21, 1914

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PER CURIAM:

The charges presented are threefold. The complaint charges:

1. That the respondent attorney, in collusion with his client, Juliana Bayubay y Garcia, withheld the payment to the petitioner of certain sums of money which represented, in part, the purchase price of a piece of land sold by complainant to said Juliana Bayubay y Garcia, which retardation, by depriving him of money on which he was depending, prevented the complainant from redeeming certain jewelry which he had sold with a right to repurchase, thereby causing him serious damage.
2. That the said respondent maliciously placed obstacles in the way of the petitioner in the collection of the sum which his client owed to the complainant, thereby obligin the complainant to pay to said respondent, P350 on one occasion and P550 on another occasion, a total of P900, which was received by said respondent as a consideration for his permitting his client to make the payments which she had agreed to make to the complainant.
3. That the said respondent has refused to pay to the complainant the sum of P1,330 which his client had placed in his possession for said complainant, the same being the remainder of the purchase price of the land sold as above stated.

From the evidence taken in this case it appears that, on the 2d of March, 1912, the complainant, by an instrument in writing, duly acknowledged before Luciano de la Rosa, a notary public, sold to Juliana Bayubay y Garcia a parcel of sugar land situated in the barrio of Canda, municipality of Balayan, Province of Batangas, the area and boundaries whereof were duly set out in the first paragraph of that instrument, for P15,500, to be paid as stated in said instrument as follows:

"4th. That, of the said sum of fifteen thousand five hundred pesos (P15,500), Philippine currency, the said purchaser, Juliana Bayubay y Garcia, will pay immediately on the execution of this instrument the sum of two thousand pesos (P2,000), Philippine currency, which I have received to my entire satisfaction; and that said Juliana Bayubay y Garcia will pay to me, in addition, the sum of four thousand two hundred pesos (P4,200), Philippine currency, or whatever sum may be necessary to redeem the property from Vicente Noble and Matilde Martinez, his wife, and that immediately after the redemption of said property she will pay to me the sum of one thousand eight hundred pesos (P1,800), Philippine currency, or the sum necessary to make a total of eight thousand pesos (P8,000), Philippine currency; that the balance of seven thousand five hundred pesos (P7,500), Philippine currency, will be paid to me by the said Juliana Bayubay y Garcia on or before the 10th day of January, 1913, it being understood that the vendor, Severino Caoibes y Calzado, will continue in the possession and use of the said lands so sold until the payment of the total sum has been effected."

The sum of P8,000 was paid at the time specified, namely, the execution of the instrument. With respect to the second payment of P7,500, at the request of the vendor the vendee made several payments in advance, amounting in all to P2,170, so that, at the beginning of January, 1913, there was a balance in favor of the vendor of only P5,330. Of this sum the said purchaser, in accordance with the suggestion of her attorney, the respondent herein, paid to the complainant the sum of P2,000 on the 10th of January, 1913, another P2,000 on the 22d of February of the same year and P1,000 of the balance was levied upon under an execution against the vendor and taken from the possession of the purchaser and applied upon said execution. As a result there remains unpaid at this time the sum of P330.

Relative to the first charge the accused attorney alleges that, after having made the purchase of the land in question and having paid thereon all but P5,330, it was discovered that the land was of far less area than that represented by the vendor. This fact was, by the accused attorney, brought to the attention of his client, the purchaser, and it was discussed between them whether or not, for that reason, the purchaser should refuse to pay the price agreed upon. Following this discussion the respondent had a talk with the complainant in which he stated that his client was not disposed to pay the P5,330, and that, instead of dealing directly with her, as he had in the past, the vendor was to negotiate with her attorney, the respondent.

It appears from the evidence in the case that, according to the representations of the vendor and the statements in the conveyance itself, the land sold by Caoibes to Juliana Bayubay y Garcia was 90 hectares in area. When, however, application was made by the purchaser to the Court of Land Registration for the registration of the title thereto, it was found, from the measurement of the Bureau of Lands, that the land contained only 60 hectares. Whether or not by reason of this shortage in area the purchaser would have had the right to demand and obtain a reduction in the purchase price or a cancellation of the sale, we do not now undertake to decide; but it is clear that this difference in area determined the purchaser to retain at least a portion of the moneys then remaining in her hands as an equivalent for the shortage of 30 hectares. She stated as much to the complainant and charged her son, Ramon Magiumot, to have De la Rosa tell him the same thing. It does not appear anywhere in the evidence that the respondent, prior to talking with the complainant, had advised his client, Juliana Bayubay y Garcia, to reduce the purchase price, as she had stated to the complainant she was going to do. Respondent himself says that, with the purchase price of the land in question, he had had nothing whatever to do until he had been asked by Gaoibes to intervene in connection therewith, Caoibes having dealt directly with the purchaser both as to the sale and as to the collection of the purchase price until the purchaser discovered the difference in area between that alleged and that delivered.

We are satisfied from a review of the evidence relative to the first charge that it cannot be sustained. There appears no effort on the part either of the respondent or of his client to embarrass the complainant by delays and there is shown no act upon their part tending to delay payment which could not be justified sufficiently to refute the charge.

We may say the same with regard to the third charge. The allegation that there still remains in the hands of the respondent P1,330 belonging to the complainant is not only not proved, but the contrary appears. According to the evidence, of the P5,330 which remained in the hands of the purchaser, P2,000 was paid to Caoibes by the purchaser through the respondent in the month of January, 1913; P2,000 was paid by the respondent in the month of February to attorney Mariano P. Leuterio, who at that time represented the complainant; and P1,000 was paid by the respondent to the office of Kincaid & Hartigan upon an execution issued upon a judgment obtained against the complainant. There still remains in the hands of the purchaser the sum of P330. This sum is not in the possession of the respondent, nor has he anything to do therewith.

In relation to the second allegation against the respondent, namely, that he, by reason of the influence which he

had with Juliana Bayubay y Garcia, prevented certain payments from her to the complainant, and thereby, taking advantage of the complainant's straitened financial circumstances, forced him, in order to obtain that to which he was in law entitled, to pay to the respondent P900, P350 at one time and P550 at another, it may be said that the charge, as it appears in the complaint, is very indefinite in its allegations. Strictly speaking, those allegations are insufficient to put the respondent upon his trial; but no objection having been made on that or any other ground and the evidence in the case having been presented in support thereof and such evidence having clarified fully the purpose of the allegation, we pass its sufficiency without comment.

From the evidence one might gather one and possibly two different charges, namely, that the respondent, knowing complainant's straitened financial circumstances and being able to control the payments which Juliana Bayubay y Garcia was to make to the complainant, took advantage of these conditions to squeeze out of complainant certain sums of money; or that, respondent being the attorney for Juliana Bayubay y Garcia, became also, in effect, the attorney of the complainant for the recovery of the payments agreed upon between him and said Juliana Bayubay y Garcia, and that, acting as attorney for both parties, whose interests were opposed to each other, he collected fees from both. These two charges being fairly within the evidence adduced, we have considered both of them.

It is undoubted from the evidence that the respondent attorney was retained by the purchaser, Mrs. Bayubay, to prosecute inquiries to determine whether or not she could procure a reduction in the purchase price by reason of the discrepancy in the area of the land. On the other hand, accepting the testimony of the respondent himself, he was asked by the complainant to intervene on his behalf and to induce the purchaser to pay the full purchase price in spite of her expressed purpose of obtaining a reduction therein, and he accepted that commission from the complainant.

Respondent testified:

"Later, at the request of Mr. Caoibes, I saw Juliana Bayubay and her son, Ramon, as the latter is the one who attended to the matter and was always consulted by his mother. I told them that Mr. Caoibes had sent me there to intercede in his behalf to the end that Juliana Bayubay should pay him the P5,500 which remained due, notwithstanding the difference in the extent of the land. Juliana Bayubay at last told me, 'out of consideration for you we will reduce the purchase price two thousand pesos or three thousand pesos by reason of the misrepresentation as to the area of the land, because the difference is very great, and that he should agree to this instead of the P5,000 which he ought to lose.' Two or three days later I saw Mr. Caoibes and told him that Juliana Bayubay insisted on discounting something by reason of the difference in area. Thereupon Mr. Caoibes insisted that I investigate further to see if I could not recover all of the P5,500. As I had already done several things for Mr. Caoibes without his having paid me anything, I said to him frankly: 'I am tired of this matter. I am not the attorney of Juliana Bayubay but rather you are the one who is utilizing my services without having paid me anything up to the present, time. Now, if I am able to get Juliana Bayubay to pay you P5,500, notwithstanding the difference in the area of the land which you sold, what am I going to get out of it?' Mr. Caoibes at first offered me P100, then P200. I told him that I could not accept it. He then asked me what I wanted and I told him that in view of the fact that he was being benefited in about P5,000 I could not accept less than P1,000 in case I was able to get the consent of Juliana Bayubay to make the payment, which payment I was not sure I was able to accomplish. We finally agreed that he should pay me P1,000."

It appears from the evidence that De la Rosa collected from Caoibes under his agreement with him the sum of P900. It does not appear that he collected anything from Juliana Bayubay y Garcia in relation to this matter. What does appear is that he was to receive as attorney for the purchaser Juliana Bayubay for the registration of her, title thereto under the Torrens system the sum of P800, but, according to the testimony of the respondent, corroborated by Ramon Maglumot; the son of the purchaser, the respondent forgave the payment of the P800 and obtained the

registration of the title without exacting any fee what' ever. This gift of services was brought about by the assertion of the purchaser that he ought not to collect the P800 from her inasmuch as she had lost so much by reason of the difference in the area of the land for which she had not collected anything from Caoibes.

It should be noted that, although it appears that the respondent was acting as attorney for both parties, the vendor and the purchaser, whose interests were diametrically opposed to each other, he' was doing so with the knowledge and consent of both parties. The complainant knew that De la Rosa was acting for and on behalf of the purchaser because he had conferred with him as her representative. The purchaser knew that he was acting for and on behalf of the seller for pay because he had obtained from her express permission to do so. "

Although it appears from the evidence that the respondent was acting for and on behalf of both parties to the controversy, we do not regard this as constituting malpractice under the law, it appearing undisputed in the record that he acted thus with the knowledge and consent of both parties interested. This being the case, neither party was deceived by respondent, and neither one suffered involuntary damages by reason of his actions.

While it is true that the conduct of respondent in this case does not constitute malpractice within the provisions of section 21 of the Code of Civil Procedure, nevertheless it does constitute a practice severely to be condemned as strongly tending to deprive the relation of attorney and client of those special elements which make it one of trust and confidence, with the corresponding obligations, and to change it into one which may be modified and dallied with in the interest of the attorney who thinks he sees an opportunity of making more money by a combination with his client's adversary. It is very difficult for an attorney to give disinterested advice where he represents both parties to a controversy—so difficult, in fact, that it has become a fixed rule in all' branches of the law that, when one is representing another in a given matter, he cannot, at the same time, legally represent his principal's adversary. "No servant can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other." We discourage the practice indulged in by the attorney in this case as dangerous in its possibilities.

The proceedings are dismissed, costs de officio.

Arellano, C. J., Carson, Moreland, Trent, and Araullo, JJ.

Proceedings dismissed.

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