

ROMAN GADOR, COMPLAINANT, VS. ISIDRO BAYAWA, RESPONDENT.*Adm. Case No. 1298. January 30, 1982*

Ponente: FERNANDEZ, J.

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On March 6, 1974 Roman Gador filed with this Court against Isidro Bayawa, a member of the Philippine Bar, a sworn complaint for disbarment alleging that on March 13, 1972 the respondent filed a complaint for and in behalf of his clients, Consolita Pacheco and others, in the Court of First Instance of Negros Oriental for recovery of possession of a parcel of land with damages, docketed as Civil Case No. 5399, against the complainant; that on August 4, 1972 the complainant filed in Civil Case No. 5399 a motion to dismiss on the ground that the plaintiffs did not attach to their complaint the original or copy of the alleged deed of mortgage which served as a basis of their action; that on November 3, 1973 the Court of First Instance of Negros Oriental dismissed Civil Case No. 5399 without prejudice because the plaintiffs failed to attach the actionable document to their complaint despite the order dated August 24, 1973 to do so; that right after the order of dismissal was dictated in open court, the respondent Bayawa told the lawyer of the defendant, complainant herein, that said Bayawa would cause more trouble on the land in question and despite the court order he would harvest the crops on the land; that later the respondent advised his client Olimpio Dayapan on January 18, 1974 to cut 21 bamboo "poles"; that the respondent instructed his client Olimpio Dayapan to forcibly seize and hold 4,010 ears of corn which rightly belonged to the complainant because it was he who planted the same; that the respondent fomented trouble between his clients and the complainant; and that the respondent had gone to court fully knowing well that the case he handled was flimsy and which he branded as a mere "fishing expedition".[1]

In his answer received at the Bar Division of this Court on May 7, 1974, the respondent denied having instructed his clients to cut bamboo "poles" and to forcibly seize and hold 4,010 ears of corn, and alleged that he filed Civil Case No. 5399 in the Court of First Instance fully knowing the case to be meritorious and not for "fishing expedition"; and that according to the notarial record of the Municipal Court of Tayasan, Negros Oriental, a deed of sale with pacto de retro was entered into between Telong Pacheco and Roman Gador involving the property in question in Civil Case No. 5399.[2]

This administrative case was referred to the Solicitor General for investigation, report and recommendation.[3]

The Solicitor General delegated the investigation of the case to the City Fiscal of Dumaguete City.

The report of the City Fiscal showed that the respondent had not advised his clients to take the law into their hands; and that the respondent filed Civil Case No. 5399 without attaching to the complaint the actionable document.[4]

In his report and recommendation filed on July 2, 1981 the Solicitor General found that the respondent filed Civil Case No. 5399 without an actionable document and recommended that the respondent be admonished to act with a higher degree of fidelity in the practice of his profession as a lawyer and that a repetition of the offense would be dealt with more severely.[5]

Attached to the report and recommendation was the corresponding complaint against Isidro Bayawa.[6]

In his answer to the complaint of the Solicitor General filed on September 11, 1981 the respondent explained that the actionable document (Deed of Sale with Pacto de Retro) was in his possession but the same was lost while the said respondent was in transit from Dumaguete City to Tayasan, Negros Oriental and the document was recovered after a year; that he refiled Civil Case No. 5399 which was docketed as Civil Case No. 5977; that he had always conducted himself in the practice of law in accordance with his oath; and that the complainant Roman Gador had voluntarily requested the Investigating City Fiscal to drop his case for he had lost interest to prosecute his complaint. Attached to the answer is a xerox copy of a Deed of Sale with Pacto de Retro between Telong Pacheco as vendor and Roman Gador as vendee.[7]

It is thus seen that the respondent did not file Civil Case No. 5399 without an actionable document. He failed to attach a copy of said document because he had misplaced it. Upon locating the Deed of Sale with Pacto de Retro he refiled the case. Hence no prejudice was caused to his clients.

This administrative case was filed by the adverse party who naturally has a grudge against the respondent.

In his report the City Fiscal said that "There is no showing, however, that the respondent acted wilfully and in bad faith." [8]

In view of the foregoing, there is no reason to admonish the respondent to act with a higher degree of fidelity in the practice of his profession as a lawyer. It does not appear that the respondent was remiss in his duty to his clients.

WHEREFORE, the complaint of the Solicitor General is hereby dismissed.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, Plana and Escolin, JJ., concur.

Teehankee, J., took no part.

[1] Rollo, pp. 1-2.

[2] Rollo, pp. 14-23.

[3] Rollo, p. 31.

[4] Rollo, pp. 41-42.

[5] Rollo, pp. 36-45.

[6] Rollo, pp. 32-35.

[7] Rollo, pp. 49-51.

[8] Rollo, p. 44.

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