

LEONCIO FLORES AND GLORIA PERALTA FLORES, COMPLAINANTS, VS. ATTORNEY VICENTE V. DUQUE, RESPONDENT.

A.C. No. 1199. March 18, 1983

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

This administrative complaint for disbarment demonstrates anew that a member of the bar cannot be too careful in the performance of the duties owed his client. Here, Attorney Vicente V. Duque was charged with failing to notify his clients, now complainants, Leoncio Flores and Gloria Peralta, of the date of the hearing set for July 1, 1971 and to be present at such hearing, as a result of which, with both counsel and the parties being absent, the case was dismissed by the trial court.

In the answer of respondent, he put in issue the truth of the allegations against him stating that it was Inocencio Peralta, father of complainant Gloria Peralta married to the other complainant Leoncio Flores, who engaged his services to file a case for consolidation of ownership of a portion of land in the Court of First Instance of Nueva Vizcaya. He then requested Peralta to bring with him the complainants and their papers. He was shown a deed of sale with right to repurchase. Accordingly, he prepared a complaint for consolidation of ownership based on such deed and filed the same in the Court of First Instance of Nueva Vizcaya on July 28, 1969. It was docketed as Civil Case No. 1758 of such Court, a copy of such complaint having been attached to his answer as one of the annexes. After some time from the filing of such complaint, the complainants revealed, and there was confirmation from Inocencio Peralta that they "are (a) not in actual possession of the portion of land, (b) do not enjoy the fruits of the land or the produce, and (c) the price of P300.00 [the amount of repurchase] is not commensurate or is grossly inadequate for the land." [1] The respondent told complainants that under such circumstances, an action for redemption would not lie. As to the allegation that he failed to notify complainants as well as to attend the hearing of such case on July 1, 1971, there was also specific denial, the truth of the matter, according to his answer, "being that the respondent notified the complainants but the complainants revealed for the first time that they assigned their rights and interest to a third person by the name Choleng dela Cruz and delivered to her the owner's duplicate of Transfer Certificate of Title No. T-9890 of Catalina Acoba, and they told the respondent that the obligation of the defendant Catalina Acoba has already been settled, said Catalina Acoba having paid the loan, and the complainants told respondent further to forget the case and likewise to forget his fees, and the complainants suggested that the complaint be dismissed. With that information and attitude of the complainants, the respondent did not go anymore to the court on July 1, 1971, the respondent finding it not anymore necessary, and considering also that respondent did not have anymore time to file the motion to dismiss, having in mind that the case will be dismissed by the court for lack of interest to prosecute, and by that way damages may not be imposed against them." [2]

The case was then referred to the Solicitor General for investigation, report and recommendation. After such investigation, the report and recommendation was submitted by the Solicitor General. The pertinent questions were first set forth, thus: "1. Did respondent notify his clients (complainants herein) of the hearing on July 1,

1971? 2. Was he negligent in not attending the hearing on July 1, 1971? 3. Did he notify his clients of the dismissal of the case?"[3]

The answers to the above three questions, according to such report, follow: "We are inclined to agree with the respondent that he indeed notified his clients about the hearing on July 1, 1971. The respondent's reason that he and his clients did not attend the hearing because the obligation of Catalina Acoba was already paid to Soledad de la Cruz also appears more credible. This is clearly apparent from the testimony of Catalina Acoba and the Exhibits of the respondent. Exhibit '21', the title to the property allegedly sold; Exhibit '23', the writing evidencing the loan taken by complainant from Soledad dela Cruz and Exhibit '22', the assignment made by Soledad dela Cruz and of her rights and interest in Exhibit '23' were all shown to be already in the possession of Catalina Acoba. Catalina Acoba's possession of these documents indicates that she paid Soledad dela Cruz the amount owed by Leoncio Flores from Soledad dela Cruz. The payment was made so that Catalina Acoba could recover the title she gave as collateral to Leoncio Flores for the loan given to her. It is relevant to mention in this connection that the amount paid by Catalina Acoba to Soledad dela Cruz is the same as the amount she received from complainant Leoncio Flores in the Sale with Right to Repurchase of her land. There is therefore reason to believe the statement of Catalina Acoba, that after she paid the P300 to Soledad dela Cruz, Acoba went to the complainants and informed them that she had already paid the amount of P300 to the said Soledad dela Cruz, and that it was by virtue of said payment that the case was dismissed. It is true that Exhibit '23' is not the document executed by Catalina Acoba in favor of the complainant, Leoncio Flores, the document executed by her being a deed of sale with right to repurchase. Yet the fact that Exhibit '23' was in her possession shown that she had already paid the amount taken by her from the complainants." [4] The finding, therefore, was to effect "that the respondent notified his clients of the hearing on July 1, 1971 [and] that the complainants knew that the case was dismissed on July 1, 1971." [5]

The recommendation is for the exoneration of the charge against respondent. It was, however, pointed out that the procedure followed by him in having the case dismissed was not correct and proper in all respects. Thus: "The respondent admitted during the hearing that he agreed with his client not to appear in court so that there will be no pronouncement as to damages. The respondent should have at least notified the trial court that the complainants were no longer interested in prosecuting the case. Had he done this, this case would not have arisen. It is believed, however, that while the mistake committed by the respondent may indicate poor judgment in the choice of alternative procedures, it is not so grave as to warrant disciplinary action." [6]

The recommendation is accepted by this Court but not in its entirety. Exoneration is proper. That is to abide by the ruling of the Tionko decision. [7] In the oft-quoted language of Justice Malcolm: "The serious consequences of disbarment or suspension should follow only when there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as officer of the court in accordance with his oath." [8] From *Atienza v. Evangelista* [9] to *Santos v. Panganiban, Jr.*, [10] twelve other cases may be cited, Santos being promulgated only on February 28, 1983. There must be this qualification however. For the poor judgment exercised by respondent Duque, he deserves to be admonished by this Court. He is so admonished.

WHEREFORE, the administrative case against Attorney Vicente V. Duque is dismissed with an admonition that he should exercise greater care and prudence in the performance of his obligations as an officer of the Court. Let a copy of this decision be spread on his records.

Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.
Aquino, J., is on leave.

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- [1] Answer, 2.
- [2] Ibid, 3-4.
- [3] Report and Recommendation, 11-12.
- [4] Ibid, 14-15.
- [5] Ibid, 16.
- [6] Ibid.
- [7] 43 Phil. 191 (1922).
- [8] Ibid, 194.
- [9] Adm. Case No. 1517, November 29, 1977, 80 SCRA 338.
- [10] Adm. Case No. 1094.

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