

GENEROSA BUTED AND BENITO BOLISAY, PETITIONERS, VS. ATTY. HAROLD M. HERNANDO, RESPONDENT.

A.C. No. 1359. October 17, 1991

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PER CURIAM:

On 22 August 1974, spouses Generosa Buted and Benito Bolisay filed an administrative complaint for malpractice against respondent Atty. Harold M. Hernando, charging the latter with having wantonly abused professional secrets or information obtained by him as their counsel.

After respondent Hernando filed his Answer on 25 June 1974, the Court, in a resolution dated 4 October 1974 referred the complaint to the Solicitor-General for investigation, report and recommendation.

On 10 February 1975, complainants presented a Joint Affidavit of Desistance.[1]

On 24 October 1975, the Solicitor-General conducted a hearing where respondent took the witness stand on his own behalf.

The record of the case shows the following background facts:

In an action for partition instituted by Generosa as compulsory heir of the deceased Teofilo Buted, respondent was counsel for Luciana Abadilla and a certain Angela Buted. Involved in said partition case was a parcel of land identified as Lot 9439-B. Respondent ultimately succeeded in defending Luciana Abadilla's claim of exclusive ownership over Lot 9439-B. When Luciana died, respondent withdrew his appearance from that partition case.

It appears that Luciana Abadilla sold the lot to Benito Bolisay and a new Transfer Certificate of Title over the lot was issued in the name of complainant spouses.

When an action for specific performance was lodged by a couple named Luis Sy and Elena Sy against Benito Bolisay as one of the defendants,[2] the latter retained the services of respondent. Atty. Hernando however claims that he rendered his services to Benito Bolisay free of charge. Subject of this case was a contract of lease executed by Benito's co-defendant therein, Enrique Buted, over a house standing on a portion of Lot No. 9439-B. It appears that the Sy's were claiming that the lease extended to the aforementioned lot. Benito was then asserting ownership over the realty by virtue of a Deed of Sale executed by Luciana Abadilla in his favor. Eventually, the Sy's were ordered to vacate the house subject of the lease. Respondent avers that the relationship between himself and Benito Bolisay as regards this case was terminated on 4 December 1969.[3]

On 23 February 1974, respondent Hernando, without the consent of the heirs of Luciana Abadilla and complainant spouses, filed a petition on behalf of the heirs of Carlos, Dionisia and Francisco all surnamed Abadilla, seeking the cancellation of the Transfer Certificate of Title (TCT) of complainant spouses over the lot. Carlos, Dionisia and Francisco were Luciana's registered co-owners in the original certificate of title covering Lot No. 9439-B.[4] At the hearing, respondent Hernando testified that if the petition for cancellation of TCT was granted, Lot 9439-B would no longer be owned by complainant spouses but would be owned in common by all the heirs of Luciana Abadilla.[5]

Complainant spouses, upon learning of respondent's appearance against them in the cadastral proceeding, manifested their disapproval thereof in a letter dated 30 July 1974.[6] Respondent however, pursued the case until it was eventually dismissed by the trial court on 2 September 1974 on the ground of prescription.[7]

At the hearing before the Office of the Solicitor General and in his Answer, respondent Hernando admitted his involvement in the cadastral case as counsel for the Abadillas but denied having seen or taken hold of the controversial Transfer Certificate of Title, and having availed himself of any confidential information relating to Lot 9439-B.

In its Report and Recommendation dated 29 March 1990, the Solicitor General recommends that respondent be suspended from the practice of law for three (3) months for violation of the Canons of Professional Ethics by representing clients with conflicting interests, and filed before this Court the corresponding Complaint[8] dated 30 March 1990.

The issue raised in this proceeding is: whether or not respondent Hernando had a conflict of interests under the circumstances described above.

The Canons of Professional Ethics, the then prevailing parameters of behavior of members of the bar, defines a conflict of interests situation in the following manner:

"6. Adverse influence and conflicting interests. -

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It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidence forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed." (Underscoring supplied)

Though as regards the first and second cases handled by respondent, no conflict of interest existed, the same cannot be said with respect to the action for specific performance and the cadastral proceeding. By respondent's own admission, he defended the right of ownership over Lot 9439-B of complainant Benito Bolisay in the action for specific performance. He assailed this same right of ownership when he subsequently filed a petition for cancellation of complainants' Transfer Certificate of Title over that same lot. Respondent Hernando was in a conflict of interest situation.

It is clear from the above-quoted portion of the Canons of Professional Ethics that in cases where a conflict of interests may exist, full disclosure of the facts and express consent of all the parties concerned are necessary.[9] The present Code of Professional Responsibility is stricter on this matter considering that consent of the parties is now required to be in written form.[10] In the case at bar, such consent was wanting.

Respondent persistently argues that contrary to the claims of complainant spouses, he had never seen nor taken hold of the Transfer Certificate of Title covering Lot. No. 9439-B nor obtained any confidential information in handling the action for specific performance.[11] The contention of respondent is, in effect, that because complainant has not clearly shown that respondent had obtained any confidential information from Benito Bolisay while representing the latter in the action for specific performance, respondent cannot be penalized for representing conflicting interests. That is not the rule in this jurisdiction. The rule here is, rather, that the mere fact that respondent had acted as counsel for Benito Bolisay in the action for specific performance should have

precluded respondent from acting or appearing as counsel for the other side in the subsequent petition for cancellation of the Transfer Certificate of Title of the spouses Generosa and Benito Bolisay. There is no necessity for proving the actual transmission of confidential information to an attorney in the course of his employment by his first client in order that he may be precluded from accepting employment by the second or subsequent client where there are conflicting interests between the first and the subsequent clients. The reason for this rule was set out by the Court in *Hilado v. David*[12] in the following terms:

Communications between attorney and client are, in a great number of litigations, a complicated affair, consisting of entangled relevant and irrelevant, secret and well known facts. In the complexity of what is said in the course of the dealings between an attorney and a client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause. And the theory would be productive of other unsalutary results. To make the passing of confidential communication a condition precedent; i.e., to make the employment conditioned on the scope and character of the knowledge acquired by an attorney in determining his right to change sides, would not enhance the freedom of litigants, which is to be sedulously fostered, to consult with lawyers upon what they believe are their rights in litigation. The condition would of necessity call for an investigation of what information the attorney has received and in what way it is or it is not in conflict with his new position. Litigants would be in consequence be wary in going to an attorney, lest by an unfortunate turn of the proceeding, if an investigation be held, the court should accept the attorney's inaccurate version of the facts that came to him.

Hence the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice. (*Strong vs. Int. Bldg., etc.; Ass'n*, 183 Ill., 97; 47 L.R.A., 792) It is founded on principles of public policy, on good taste. As has been said another case, the question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice." [13] (Underscoring supplied)

This Court went further in *San Jose v. Cruz*, [14] where the lawyer was charged with malpractice for having represented a new client whose interest was opposed to those of his former clients in another case:

"The record shows that the respondent offered his services to the Matienzo spouses knowing that the petitioner had obtained a favorable judgment in the civil case No. 5480 and that his efforts in the subsequent civil case No. 5952 would frustrate said judgment and render it ineffectual, as has really been the result upon his obtaining the writ of injunction above-mentioned. Obviously his conduct is unbecoming to an attorney and cannot be sanctioned by the courts. An attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated and it is not a good practice to permit him afterwards to defend in another case other persons against his former client under the pretext that the case is distinct from, and independent of the former case." [15] (Underscoring supplied)

The appropriate rule has been expressed by Justice Malcolm in the following manner:

"An attorney is not permitted, in serving a new client as against a former one, to do anything which will injuriously affect the former client in any manner in which the attorney formerly represented him, though the relation of attorney and client has terminated, and the new employment is in a different case; nor can the attorney use against his former client any knowledge or information gained through their former connection." [16] (Underscoring supplied)

The absence of monetary consideration does not exempt the lawyer from complying with the prohibition against

pursuing cases where a conflict of interest exists. The prohibition attaches from the moment the attorney-client relationship is established and extends beyond the duration of the professional relationship.

The Court therefore agrees with the Solicitor-General that respondent Hernando is guilty of violation of the Canons of Professional Ethics by representing clients with conflicting interests. We believe, however, that a heavier penalty is appropriate.

ACCORDINGLY, the Court Resolved to SUSPEND Atty. Harold M. Hernando from the practice of law for a period of five (5) months, with a WARNING that repetition of the same or similar offense will warrant a more severe penalty. A copy of this Resolution shall be furnished to all courts and to the Office of the Bar Confidant and spread on the personal record of respondent.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Rollo, p. 17.

[2] TSN, 24 October 1975, p. 19.

[3] Rollo, p. 12.

[4] TSN, 24 October 1975, p. 42.

[5] Id., p. 9; Rollo, p. 18.

[6] Rollo, p. 6.

[7] Id., pp. 3-12.

[8] Id., p. 20.

[9] In Re Dela Rosa, 27 Phil 258 (1914).

[10] Code of Professional Responsibility, Canon 15, Rule 15.03 which provides: A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts. See also Canon 37, Canons of Professional Ethics.

[11] TSN, 24 October 1975, p. 69 and 71; Answer, p. 2.

[12] 84 Phil. 570 (1932).

[13] 84 Phil. at 578-579; See also, Nombrado vs. Hernandez, 135 Phil 5 (1968); In re Hamilton, 24 Phil 100 (1913).

[14] 57 Phil. 792 (1933); See also Sumangil v. Sta. Romana, 84 Phil. 777 (1949); and Natan v. Capule, 91 Phil. 640 (1952).

[15] 57 Phil. at 794-795.

[16] Legal and Judicial Ethics, 143 (1949).

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