

ADELINA C. ADRIAS, COMPLAINANT, VS. ATTORNEY SALVADOR P. DE GUZMAN, JR., RESPONDENT.*A.C. No. 1409. December 30, 1982*

Ponente: FERNANDO, C.J.

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Complainant imputed gross malpractice to respondent Salvador P. de Guzman, Jr., a member of the Philippine Bar. He was accused of taking advantage of the "innocence and trusting nature of the complainant after grossly violating the warranty aspect of a sales contract which he entered into with the complainant * * * even [going] to the extent of harassing her, attaching and levying her properties [purportedly] to enforce no less than thirty six thousand pesos claim allegedly by reason of the complainant's violation of a lease agreement with him * * * but which respondent very well knew to be entirely worthless by reason of the sales agreement which he him-self has caused to be executed in favor of the herein complainant as evidenced by Annex A ? thus performing acts which should not be tolerated and does not speak well of a member of the Philippine Bar and [demonstrating that] he is unfit to be a member thereof." [1]

Respondent was required to answer by this Court. He alleged in such pleading that his participation in the transaction wherein his wife, Mrs. Esperanza de Guzman, subleased the premises in question to the complainant was limited to preparing the contract of sublease; that he was not a party to the transaction wherein his wife executed an absolute deed of sale of the restaurant business, located in the same premises, in favor of the complainant; that the levy on complainant's properties was valid in all aspects, being in accordance with a writ of execution pursuant to a judgment by default issued by the City Court of Manila in Civil Case No. 229743 thereof which ordered the defendant (herein-complainant) to vacate and surrender the premises and to pay certain obligations including the P1,000.00 balance of the sale of the goodwill and equipment of the restaurant business in accordance with the aforestated deed of sale, P600 rental for August 1973 and P100 daily rental starting September 5, 1973 until such time as the property was vacated; that complainant's petition for certiorari with the Manila Court of First Instance under Civil Case No. 93714 assailing the default judgment was denied; that this denial was appealed to the Court of Appeals with the prayer for the issuance of a writ of preliminary injunction but that said writ was likewise denied by the Court which properly noted that the remedy availed of by herein complainant should have been an appeal from the decision of the lower court and not a petition for certiorari; and that, therefore, the present complaint was devoid of any basis in fact or in law.

The matter was then referred by this Court to the Office of the Solicitor General for investigation, report and recommendation.[2] Both complainant and respondent testified and submitted evidence in support of their respective contentions. The findings of fact on the whole sustained the claim of respondent about the absence of any gross malpractice on his part.

On the question of whether or not respondent was a party to any of the contracts executed by the complainant and the wife of the respondent, the Report reads: "In the contract of sale of the restaurant business (Exh.'B'), the warranty of which was adverted to by the complainant to have been allegedly violated by the respondent, it needs

be established at the outset if, indeed, the respondent was a party thereto or had any participation in it. The questioned document glaringly negates respondent's alleged execution thereof. He was not a party to it and his only participation therein was the affixing of his signature to indicate his marital consent. The subjects treated in the sales contract are matters purely between the parties thereto, of whom the respondent was not one. Under these facts, the determination of any violation of whatever warranty there was, becomes futile. And even granting *arguendo* that the respondent was a party to the contract, complainant had not substantiated, nay, proven her insistence that the respondent violated the warranty thereof."^[3] Neither was complainant sustained in her assertion that in the levy on her properties arising from the writ of execution there was either fraud or harassment exercised upon her by complainant. So it was pointed out in this portion of the Report: "It bears restating that the levy on the properties of the complainant and the auction thereof was made pursuant to the writ of execution issued upon a judgment of default. Such writ was duly enforced only after the complainant had unsuccessfully resorted to the numerous legal remedies she availed of. These were the motion to lift the order of default, motion for reconsideration of the order denying the first motion before the city court, the petition for certiorari in the court of first instance attacking the judgment by default and the appeal to the Court of Appeals of the judgment dismissing the petition for certiorari, all of which were consistently found against the complainant. There is no denying the conclusion, therefore, that the levy was valid and legal. Such levy, by whatever valuation given to it, cannot amount to a fraud of the complainant or a harassment upon her, as she had unduly claimed. The contention of the complainant in support of her allegation of fraud, namely that the respondent caused the execution of the sublease agreement which he knew to have been rendered worthless by the subsequent execution of the sales contract, must fail."^[4]

The conclusion in such Report is to this effect: "It having been shown that the respondent had not violated the warranty of the sales contract as in fact he was not a party thereto, and further that the levy on and auction of complainant's properties legally proceeded from a writ of execution pursuant to a final judgment thereby obliterating any claim of fraud or harassment upon the complainant, there remains only the conclusion that the respondent had not committed gross malpractice in the incidents complained of."^[5]

The recommendation is for the dismissal of the complaint for lack of merit. In view of the fore-going, that was to be expected. An excerpt from *In re Tionko*,^[6] sets forth the authoritative doctrine. Thus: "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 an officer of the court in accordance with his oath."^[7] It cannot be said that there was such clear preponderance of evidence against respondent. Certainly, the evidence militated against the claim of petitioner. Nonetheless, it can be said that respondent ought to have shown greater awareness of the fact that his wife having been a party to the contract, the utmost prudence on his part is required. That would have obviated any suspicion that he took advantage of his membership in the bar. What removes the sting from this accusation is, as pointed out in the Report and Recommendation, "that complainant's cause had been continuously handled by a succession of six lawyers."^[8] Any assertion, therefore, to the effect that he took advantage of his knowledge as a lawyer is rendered implausible. Also, as pointed out in the Report: "Moreover, no evidence had been adduced by the complainant to substantiate her claim."^[9]

WHEREFORE, the complaint for disbarment against respondent Salvador P. de Guzman, Jr. is dismissed for lack of merit. Let a copy of this resolution be spread on his record.

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

[1] Complaint, 1.

[2] The Report was submitted by Solicitor General Estelito P. Mendoza, assisted by Assistant Solicitor General Nathanael P. de Pano, Jr. and Solicitor Aurora Cortes-Jorge.

[3] Ibid, 14-15.

[4] Ibid, 18-19.

[5] Ibid, 21.

[6] 43 Phil. 191 (1922).

[7] Ibid, 194. Such a doctrine was cited with approval, according to *Atienza v. Evangelista*, Adm. Case No. 1517, November 29, 1977, 80 SCRA 338, in nine subsequent cases starting from *Javier v. Cornejo*, 63 Phil. 293 (1936), and ending with *Santiago v. Bustamante*, Adm. Case No. 827, April 29, 1977, 76 SCRA 527. *Go v. Candoy*, a 1967 decision, L-27516, October 19, 1967, 21 SCRA 438, and *Adorne v. Aldava*, a 1978 decision, Adm. Case No. 801, June 27, 1978, 83 SCRA 734, may like-wise be cited to show the continued adherence to such a principle. The latest case in point is *Rivera v. Latonero*, Adm. Case No. 1675, November 19, 1982.

[8] Report and Recommendation, 20.

[9] Ibid, 21.

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