

**ROSENDO HOMERES, COMPLAINANT, VS. QUIRINO ORIEL,
RESPONDENT.***A.C. No. 1536. December 10, 2004*

Ponente: PUNO, J.

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The instant case sprang from the sale of a Willys AC Jeep that, in 1971, was valued at P4,000.00.[1] Complainant alleged that he and Manuel Abuda, a member of the Police Force of Tacloban City, had a verbal contract of sale over the Willys AC Jeep which was the subject of replevin in Civil Case No. R-3420 in the City Court of Tacloban. According to complainant, Abuda forcibly took the said vehicle from him despite his failure to pay its purchase price in full. Abuda, on other hand, alleged that he had paid a total of P2,260.00 for the jeep leaving only a balance of P140.00 which he consigned to the city court where the replevin case was filed. He presented two receipts, signed by complainant, representing payments of P1,000.00 per receipt. Complainant countered that only one of the receipts was genuine; his signature in the other was forged.

At the pre-trial, the parties agreed that the genuineness or falsity of the questioned receipt[2] will determine the result of the case.[3] Both receipts, dated January 15, 1970 and marked as Exhibits “X” and “Y,”[4] were forwarded to the National Bureau of Investigation (NBI). The Handwriting Examination yielded the following conclusion:

Basing on the above multiple significant similarities existing between them, the conclusion arrived at, is that, the extended handwritings appearing on both Exhibits “X” and “Y”, [were written] by one and the same person.[5]

On the basis of the above-quoted findings of the NBI, the city court rendered a decision adverse to complainant. By reason of this adverse judgment, complainant charged his counsel, herein respondent Atty. Quirino Oriel, for dereliction of duty and gross ignorance of the law.

Complainant first sent a letter-complaint[6] dated November 26, 1974[7] to then Secretary of the Department of National Defense Juan Ponce Enrile. He charged respondent with culpable dereliction of duty, dishonesty, gross negligence and ignorance of the law. Then Secretary Enrile indorsed the letter-complaint to the Supreme Court for appropriate action.[8] Then Deputy Clerk of Court and Bar Confidant Arturo A. de Leon required complainant to file a formal and verified complaint.[9]

In compliance, complainant filed a formal Complaint[10] dated July 15, 1975. He alleged that he retained the services of respondent in February 1971 for the collection of a sum of money representing the unpaid balance of P840.00 on the Willys AC Jeep he sold to Abuda. However, instead of filing a case of collection for a sum of money, respondent instituted a replevin case with damages where complainant had to raise a cash bond of P16,000.00. Complainant likewise asserted that respondent failed to appear on the important stages of his case without notice or explanation, most notably on October 13, 1973 when the city court allowed Abuda to formally offer his evidence in the absence of respondent. Consequently, Exhibits 1 to 92-A offered by Abuda were

admitted^[11] but the city court granted respondent's request to submit a written opposition to the admitted exhibits and set the case for the presentation of rebuttal evidence. Again, complainant alleged, respondent failed to appear in the scheduled hearing for the reception of rebuttal evidence on December 3, 1973.^[12] He also did not file a written opposition to the exhibits of defendant.

Complainant charged that due to the negligence of the respondent, the presiding judge in the replevin case was constrained to consider the case submitted for decision. It then rendered the adverse judgment, denied his prayer for the return of the subject motor vehicle and ordered the payment of damages in the aggregate amount of P11,000.00. More, respondent failed to file a timely Motion for Reconsideration and the adverse decision became final and executory.

In his Answer, respondent denied that he was negligent in handling complainant's case. He blamed complainant for the adverse judgment as he allegedly misrepresented that his signature in one of the receipts was forged and that the Willys AC Jeep was taken from him by Abuda under the pretext that Abuda would bring the Willys AC Jeep to the auto-repair shop for check-up and reconditioning but never returned the same despite repeated demands. Respondent alleged that it was upon the insistence of complainant that he filed the replevin case. He explained that if complainant did not make such misrepresentations, he would have filed a simple case for collection against Abuda.

Respondent alleged other negligent acts of the complainant. He averred that after complainant rested his case, he seldom attended the subsequent hearings despite request of respondent to be always present in the trials so that if necessary, he could inform the court that his counsel is busy attending trial in other courts and move that his case be called later. Respondent explained that he failed to file his written opposition to defendant Abuda's exhibits due to the failure of complainant to secure a copy of the transcript of stenographic notes of the proceedings taken during the formal offer of evidence. He allegedly failed to file a timely Motion for Reconsideration because he was misinformed by the house helper that the adverse decision was received on January 16, 1974, when in fact it was received the day before. Respondent further averred that complainant also failed to see him the day before the scheduled hearings in violation of the latter's policy that clients must see him the day preceding the date of the hearing for conference and instruction; and, that this failure to cooperate on the part of complainant was a manifestation of lack of interest in prosecuting the case. Respondent also alleged that he filed a Petition for Relief from Judgment but the same was denied as complainant, allegedly without his knowledge, settled the case with Abuda by paying the latter P5,000.00.

In a Resolution dated December 2, 1975, the Court referred the case to the Solicitor General for investigation, report and recommendation.^[13] Solicitor Rizalino Cusi served as investigator and hearing officer.

The complainant testified in the hearing of February 19, 1976. At that time, complainant was already eighty-three (83) years old, hard of hearing and hard of walking, and accompanied everywhere by his daughter-in-law. The records reflect the difficulty of complainant to understand the questions propounded on him. In some instances, he could not comprehend the questions asked and they had to be written down by his daughter-in-law. Some of his answers were irresponsive.

From his testimony, it appears that the complainant engaged the services of respondent to collect the balance of the consideration for a jeep he sold to Abuda. Abuda purchased his jeep and gave him an initial payment of P500.00, followed by the amount of P10.00,^[14] leaving a balance of P840.00. For the amounts received, complainant allegedly issued no receipt trusting on the promise of Abuda, a policeman, that he would pay the full amount later. As the balance remained unpaid, complainant sought the services of respondent who filed a case for replevin instead of a complaint for sum of money.

To further substantiate his charge of professional negligence, complainant declared that he never saw respondent for the nine (9) times that he attended the hearings in court; that it was his son-in-law and not the respondent who informed him of the adverse decision rendered by the trial court; that sheriff Marcelino Veloso levied his coconut land in execution of the adverse judgment; and, that due to the pleading of his wife, the sheriff himself paid for the money judgment but took the coconut land.

Complainant also testified that on March 8, 1976, the day of his scheduled cross-examination, respondent, via telegraphic motion, moved for a continuance due to lack of transportation money. Over the objection of complainant, the investigator set the next hearing to April 1 and 2, 1976.[15] These scheduled hearings did not materialize as respondent sent another telegraphic motion asking for their postponement to April 29 and 30, 1976.[16]

In the hearing of April 30, 1976, Amancio Figaroa,[17] complainant's son-in-law, testified. He stated that his house was located behind complainant's house. Accordingly, complainant would confide in him, as in this case where complainant had problems collecting the remaining balance for the jeep he sold to Abuda. The witness said that all demand letters of complainant remained unheeded.

Figaroa further testified that during the presentation of evidence of Abuda, respondent was absent and could not be located despite his efforts to look for him; that when he inquired from respondent about the lower court's decision, respondent refused to show him a copy thereof and instead presented the Motion for Reconsideration he was drafting for complainant. The Motion was filed one day outside the reglementary period.

The records of the case show that the hearings of the case for the years 1976 to 1981 before Solicitor Cusi failed to take place due to motions of either the complainant or the respondent.

The case moved again in 1992 when the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP), thru the late Commissioner Plaridel C. Jose, ordered the parties[18] to attend the April 28, 1992 hearing at the IBP Building, Doña Julia Vargas Avenue, Pasig, Metro Manila.

In a letter[19] dated March 24, 1992, Corazon R. Homeres, daughter-in-law of complainant, informed Commissioner Jose that complainant had died of arteriosclerotic heart disease on December 12, 1977 as shown in his Death Certificate.[20] She requested that the hearings of the case be transferred to Tacloban City due to financial constraints, considering that she did not have a job and had no means to defray her transportation expenses. Commissioner Jose issued an Order dated April 28, 1992[21] requiring respondent to comment on the said request.

It took another seven (7) years before the case was scheduled for hearing. In a Notice[22] dated September 30, 1999, Investigator Corazon Evangelista-Valencia ordered the parties to appear at the October 29, 1999 hearing at the IBP Building, Capitol Complex, Cebu City. Respondent appeared but there was no representative on the part of complainant despite due notice to his counsel and daughter-in-law. Due to their non-appearance, the hearing was set for the last time on December 10, 1999.

Complainant's daughter-in-law in her letter to the IBP-Visayas Regional Discipline Committee explained that much as they would want to pursue the case at bar, "[they] deem it not to go on anymore" as they were hard up in paying for lawyer's fees and transportation expenses; and, that given the death of her father-in-law, they just deemed it wise to have peace of mind and live free of tensions, worries and anxieties.[23] Nonetheless, complainant's daughter-in-law manifested, viz.:

Yet, with all aforementioned reasons it does not mean that we consent Atty. Quirino Oriol's misconduct/mismanagement on the case x x x nor [do] we prevent your good office from disciplining its

members of the IBP. Moreover, it does not mean we tolerate such behavior [that] need[s] to be disciplined and not go [scot-free].

x x x

Also we pray and entrust in your Bar Discipline Committee that you will continue this case without our presence considering the integrity you uphold. At any rate all the facts against him are found in the court records/expediente x x x which will speak for itself. x x x[24]

On the other hand, the Notice of Hearing sent to complainant's counsel, Atty. Alfredo Estrella, was "Returned to Sender" as he had likewise died.[25]

The records show that respondent failed to attend the hearing on December 10, 1999 despite due notice and without explanation. The investigator again moved, for the last time, the presentation of respondent's evidence to January 21, 2000.[26] In the said hearing, respondent finally presented his evidence.

In the Report and Recommendation[27] dated January 15, 2004 and submitted by Investigating Commissioner Victoria Gonzales-de los Reyes, respondent was found negligent and remiss of his duties as a lawyer. He was recommended to be reprimanded with a warning that repetition of a similar offense will subject him to a stricter disciplinary action.[28]

The IBP Commission on Bar Discipline adopted and approved the Report and Recommendation of the Investigating Commissioner in a Resolution[29] dated February 27, 2004.

We affirm with modification as to the penalty.

It is a rudimentary rule under Canon 18 of the Code of Professional Responsibility that a lawyer must serve his client with competence and diligence. The evidence adduced clearly showed that respondent was negligent in handling the case of complainant.

The records reflect his series of unjustified absences in the hearings of the replevin case, his negligence in not filing a written opposition to defendant Abuda's exhibits, his failure to update complainant of the developments of his case, and his delay in filing a timely Motion for Reconsideration.

To be sure, complainant is not entirely blameless for the adverse judgment rendered in the replevin case due to his own misrepresentation. Nonetheless, this does not constitute an absolatory cause. As succinctly pointed out in the Report and Recommendation of the Investigating Commissioner:

[Respondent] cannot however claim that they are in *pari delicto* and therefore should be excused from his being remiss of his duties as the handling counsel. The excuse given by him for non-attendance in several hearings of the replevin case which was that he had other cases in the other [salas] in Tacloban City cannot be sustained considering that he had all the time to file the necessary motions. In fact, if a lawyer does not [trust his client], he can easily withdraw with leave of court giving [as] reason the misrepresentation made by the late Mr. Homeres.[30]

After careful consideration of the records, we find that the recommended penalty of reprimand is not commensurate with respondent's breach of duty. Thus, we impose upon respondent a fine of P10,000.00.

IN VIEW WHEREOF, respondent Atty. Quirino Oriel is FINED in the amount of Ten Thousand Pesos (P10,000.00) for being negligent and remiss of his duties as a lawyer in violation of Canon 18 of the Code of Professional Responsibility with stern ADMONITION that a repetition of the same or similar acts in the future will be dealt with more severely.

Let a copy of this Decision be attached to his personal records and another copy be furnished the Integrated Bar of the Philippines.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] I Rollo, 48. Complainant claims that the jeep is valued at P2,200.00, while the buyer claims that it was sold to him for P2,400.00.

[2] Marked as Exhibit 3 for defendant Abuda.

[3] I Rollo, 52.

[4] Id. at 57.

[5] Id. at 59.

[6] Id. at 3.

[7] Ibid.

[8] Id. at 1.

[9] Id., unpagd. Complainant reiterated in another letter-complaint dated December 24, 1974 his request for assistance from the Secretary of Justice. The letter-complaint was likewise indorsed on January 30, 1975 by then Undersecretary of Justice Catalino Macaraig, Jr. to this Court for appropriate action.

[10] Id. at 7-13.

[11] Id. at 15-16; Annexes B & B-1, Complaint.

[12] Id. at 19-20; Annexes C-1 & D, Complaint.

[13] Id. at 61.

[14] I Rollo, 15.

[15] II Rollo, 93.

[16] Id. at 80.

[17] Also spelled as Figueroa in some parts of the records.

[18] IV Rollo, 1.

[19] Id. at 3.

[20] Id. at 5.

[21] Id. at 7.

[22] Id. at 8.

[23] Id. at 12-13.

[24] Id. at 13.

[25] Id. at 10.

[26] Id. at 18.

[27] Id., unpaged.

[28] Id., unpaged; Report and Recommendation, 7.

[29] Id., unpaged.

[30] IV Rollo, unpaged; Report and Recommendation, 7.

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