

IMELDA A. NAKPIL, COMPLAINANT, VS. ATTY. CARLOS J. VALDES, RESPONDENT.*A.C. No. 2040. March 04, 1998*

Ponente: PUNO, J.

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The friendship of JOSE NAKPIL and respondent CARLOS J. VALDES dates back to the '50s during their schooldays in De La Salle and the Philippine Law School. Their closeness extended to their families and respondent became the business consultant, lawyer and accountant of the Nakpils.

In 1965, Jose Nakpil became interested in purchasing a summer residence in Moran Street, Baguio City.[1] For lack of funds, he requested respondent to purchase the Moran property for him. They agreed that respondent would keep the property in trust for the Nakpils until the latter could buy it back. Pursuant to their agreement, respondent obtained two (2) loans from a bank (in the amounts of P65,000.00 and P75,000.00) which he used to purchase and renovate the property. Title was then issued in respondent's name.

It was the Nakpils who occupied the Moran summer house. When Jose Nakpil died on July 8, 1973, respondent acted as the legal counsel and accountant of his widow, complainant IMELDA NAKPIL. On March 9, 1976, respondent's law firm, Carlos J. Valdes & Associates, handled the proceeding for the settlement of Jose's estate. Complainant was appointed as administratrix of the estate.

The ownership of the Moran property became an issue in the intestate proceedings. It appears that respondent excluded the Moran property from the inventory of Jose's estate. On February 13, 1978, respondent transferred his title to the Moran property to his company, the Caval Realty Corporation.

On March 29, 1979, complainant sought to recover the Moran property by filing with the then Court of First Instance (CFI) of Baguio City an action for reconveyance with damages against respondent and his corporation. In defense, respondent claimed absolute ownership over the property and denied that a trust was created over it.

During the pendency of the action for reconveyance, complainant filed this administrative case to disbar the respondent. She charged that respondent violated professional ethics when he:

- I. Assigned to his family corporation the Moran property (Pulong Maulap) which belonged to the estate he was settling as its lawyer and auditor.
- II. Excluded the Moran property from the 'inventory of real estate properties' he prepared for a client-estate and, at the same time, charged the loan secured to purchase the said excluded property as a liability of the estate, all for the purpose of transferring the title to the said property to his family corporation.
- III. Prepared and defended monetary claims against the estate that retained him as its counsel and auditor.[2]

On the first charge, complainant alleged that she accepted respondent's offer to serve as lawyer and auditor to settle her husband's estate. Respondent's law firm then filed a petition for settlement of the estate of the deceased

Nakpil but did not include the Moran property in the estate's inventory. Instead, respondent transferred the property to his corporation, Caval Realty Corporation, and title was issued in its name. Complainant accused respondent of maliciously appropriating the property in trust knowing that it did not belong to him. She claimed that respondent has expressly acknowledged that the said property belonged to the late Nakpil in his correspondences[3] with the Baguio City Treasurer and the complainant.

On the second charge, complainant alleged that respondent's auditing firm (C. J. Valdes and Co., CPAs) excluded the Moran property from the inventory of her husband's estate, yet included in the claims against the estate the amounts of P65,000.00 and P75,000.00, which respondent represented as her husband's loans applied "probably for the purchase of a house and lot in Moran Street, Baguio City."

As to the third charge, complainant alleged that respondent's law firm (Carlos J. Valdes and Associates) filed the petition for the settlement of her husband's estate in court, while respondent's auditing firm (C. J. Valdes & Co., CPAs) acted as accountant of both the estate and two of its creditors. She claimed that respondent represented conflicting interests when his accounting firm prepared the list of claims of creditors Angel Nakpil and ENORN, Inc. against her husband's estate which was represented by respondent's law firm. Complainant averred that there is no distinction between respondent's law and auditing firms as respondent is the senior and controlling partner of both firms which are housed in the same building.

We required respondent to answer the charges against him. In his ANSWER,[4] respondent initially asserted that the resolution of the first and second charges against him depended on the result of the pending action in the CFI for reconveyance which involved the issue of ownership of the Moran property.

On the merit of the first charge, respondent reiterated his defense in the reconveyance case that he did not hold the Moran property in trust for the Nakpils as he is its absolute owner. Respondent explained that the Nakpils never bought back the Moran property from him, hence, the property remained to be his and was rightly excluded from the inventory of Nakpil's estate.

As to the second charge, respondent denied preparing the list of claims against the estate which included his loans of P65,000.00 and P75,000.00 for the purchase and renovation of the Moran property. In charging his loans against the estate, he stressed that the list drawn up by his accounting firm merely stated that the loans in respondent's name were applied "probably for the purchase of the house and lot in Moran Street, Baguio City." Respondent insisted that this was not an admission that the Nakpils owned the property as the phrase "probably for the purchase" did not imply a consummated transaction but a projected acquisition.

Respondent also disclaimed knowledge or privity in the preparation of a letter (Exhibit "H") of his accounting firm to the Baguio City treasurer remitting the real estate taxes for the Moran property on behalf of the Nakpils. He contended that the letter could be a mere error or oversight.

Respondent averred that it was complainant who acknowledged that they did not own the Moran property for: (1) complainant's February 1979 Statement of Assets and Liabilities did not include the said property, and; (2) complainant, as administratrix, signed the Balance Sheet of the Estate where the Moran property was not mentioned.

Respondent admitted that complainant retained the services of his law and accounting firms in the settlement of her husband's estate.[5] However, he pointed out that he has resigned from his law and accounting firms as early as 1974. He alleged that it was Atty. Percival Cendaña (from the law firm Carlos Valdes & Associates) who filed the inestate proceedings in court in 1976.

As to the third charge, respondent denied there was a conflict of interest when his law firm represented the estate

in the intestate proceedings while his accounting firm (C. J. Valdes & Co., CPAs) served as accountant of the estate and prepared the claims of creditors Angel Nakpil and ENORN, Inc. against the estate. He proffered the following reasons for his thesis: First, the two claimants were closely related to the late Nakpil. Claimant ENORN, Inc. is a family corporation of the Nakpils of which the late Nakpil was the President. Claimant Angel Nakpil is a brother of the late Nakpil who, upon the latter's death, became the President of ENORN, Inc. These two claimants had been clients of his law and accounting firms even during the lifetime of Jose Nakpil. Second, his alleged representation of conflicting interests was with the knowledge and consent of complainant as administratrix. Third, there was no conflict of interests between the estate and the claimants for they had forged a *modus vivendi*, i.e., that the subject claims would be satisfied only after full payment of the principal bank creditors. Complainant, as administratrix, did not controvert the claims of Angel Nakpil and ENORN, Inc. Complainant has started paying off the claims of Angel Nakpil and ENORN, Inc. after satisfying the banks' claims. Complainant did not assert that their claims caused prejudice to the estate. Fourth, the work of Carlos J. Valdes and Co. as common auditor redounded to the benefit of the estate for the firm prepared a true and accurate amount of the claim. Fifth, respondent resigned from his law and accounting firms as early as August 15, 1974.[6] He rejoined his accounting firm several years later. He submitted as proof the SEC's certification of the filing of his accounting firm of an Amended Articles of Partnership. Thus, it was not he but Atty. Percival Cendaña, from the firm Carlos J. Valdes and Associates, who filed the intestate proceedings in court. On the other hand, the claimants were represented by their own counsel Atty. Enrique O. Chan. Sixth, respondent alleged that in the remote possibility that he committed a breach of professional ethics, he committed such "misconduct" not as a lawyer but as an accountant who acted as common auditor of the estate and its creditors. Hence, he should be held accountable in another forum.

On November 12, 1979, complainant submitted her REPLY.[7] She maintained that the pendency of the reconveyance case is not prejudicial to the investigation of her disbarment complaint against respondent for the issue in the latter is not the ownership of the Moran property but the ethics and morality of respondent's conduct as a CPA-lawyer.

Complainant alleged that respondent's Annexes to his Reply (such as the Statement of Assets & Liability of the Nakpils and the Balance Sheet of the Estate) which showed that complainant did not claim ownership of the Moran property were all prepared by C. J. Valdes and Co. as accountant of the estate of Jose Nakpil and filed with the intestate court by C. J. Valdes and Associates as counsel for the estate. She averred that these Annexes were not proofs that respondent owned the Moran property but were part of respondent's scheme to remove the property from the estate and transfer it to his family corporation. Complainant alleged that she signed the documents because of the professional counsel of respondent and his firm that her signature thereon was required. Complainant charged respondent with greed for coveting the Moran property on the basis of defects in the documents he himself prepared.

Complainant urged that respondent cannot disown unfavorable documents (the list of claims against the estate and the letter regarding Nakpil's payments of realty tax on the Moran property) which were prepared by his law and accounting firms and invoke other documents prepared by the same firms which are favorable to him. She averred that respondent must accept responsibility not just for some, but for all the representations and communications of his firms.

Complainant refuted respondent's claim that he resigned from his firms from March 9, 1976 to "several years later." She alleged that none of the documents submitted as evidence referred to his resignation from his law firm. The documents merely substantiated his resignation from his accounting firm.

In his REJOINDER,[8] respondent insisted that complainant cannot hold him liable for representing the interests

of both the estate and the claimants without showing that his action prejudiced the estate. He urged that it is not per se anomalous for respondent's accounting firm to act as accountant for the estate and its creditors. He reiterated that he is not subject to the jurisdiction of this Court for he acted not as lawyer, but as accountant for both the estate and its claimants.

He alleged that his accounting firm merely prepared the list of claims of the creditors Angel Nakpil and ENORN, Inc. Their claims were not defended by his accounting or law firm but by Atty. Enrique Chan. He averred that his law firm did not oppose these claims as they were legitimate and not because they were prepared by his accounting firm. He emphasized that there was no allegation that the claims were fraudulent or excessive and that the failure of respondent's law firm to object to these claims damaged the estate.

In our January 21, 1980 Resolution,[9] we deferred further action on the disbarment case until after resolution of the action for reconveyance between the parties involving the issue of ownership by the then CFI of Baguio. Complainant moved for reconsideration on the ground that the issue of ownership pending with the CFI was not prejudicial to her complaint which involved an entirely different issue, i.e., the unethical acts of respondent as a CPA-lawyer. We granted her motion and referred the administrative case to the Office of the Solicitor General (OSG) for investigation, report and recommendation.[10]

In 1983, the CFI of Baguio dismissed the action for reconveyance. The trial court ruled that respondent held the Moran property in trust for the Nakpils but found that complainant waived her right over it.

On appeal, the Court of Appeals reversed the trial court. The appellate court held that respondent was the absolute owner of the Moran property. The Decision was elevated to this Court.

On February 18, 1986, during the pendency of complainant's appeal to this Court, the OSG submitted its Report[11] on the disbarment complaint. The OSG relied heavily on the decision of the Court of Appeals then pending review by this Court. The OSG found that respondent was not put on notice of complainant's claim over the property. It opined that there was no trust agreement created over the property and that respondent was the absolute owner thereof. Thus, it upheld respondent's right to transfer title to his family corporation. It also found no conflict of interests as the claimants were related to the late Jose Nakpil. The OSG recommended the dismissal of the administrative case.

Prefatorily, we note that the case at bar presents a novel situation as it involves the disbarment of a CPA-lawyer for his demeanor in his accounting profession and law practice in connection with the property of his client.

As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith.[12] The measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard than is required in business dealings where the parties trade at "arms length." [13] Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to assure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor. [14]

In the case at bar, we cannot subscribe to the findings of the OSG in its Report. These findings were based mainly on the decision of the Court of Appeals in the action for reconveyance which was reversed by this Court in 1993.[15]

As to the first two charges, we are bound by the factual findings of this Court in the aforementioned reconveyance case.[16] It is well-established that respondent offered to the complainant the services of his law and accounting

firms by reason of their close relationship dating as far back as the '50s. She reposed her complete trust in respondent who was the lawyer, accountant and business consultant of her late husband. Respondent and the late Nakpil agreed that the former would purchase the Moran property and keep it in trust for the latter. In violation of the trust agreement, respondent claimed absolute ownership over the property and refused to sell the property to complainant after the death of Jose Nakpil. To place the property beyond the reach of complainant and the intestate court, respondent later transferred it to his corporation.

Contrary to the findings of the OSG, respondent initially acknowledged and respected the trust nature of the Moran property. Respondent's bad faith in transferring the property to his family corporation is well discussed in this Court's Decision,[17] thus:

"x x x Valdes (herein respondent) never repudiated the trust during the lifetime of the late Jose Nakpil. On the contrary, he expressly recognized it. x x x (H)e repudiated the trust when (he) excluded Pulong Maulap from the list of properties of the late Jose Nakpil submitted to the intestate court in 1973. x x x

xxx

"The fact that there was no transfer of ownership intended by the parties x x x can be bolstered by Exh. "I-2," an annex to the claim filed against the estate proceedings of the late Jose Nakpil by his brother, Angel Nakpil, which was prepared by Carlos J. Valdes & Co., the accounting firm of herein respondent. Exhibit "I-2," which is a list of the application of the proceeds of various FUB loans contracted as of 31 December 1973 by the late Jose Nakpil, x x x contains the two (2) loans contracted in the name of respondent. If ownership of Pulong Maulap was already transferred or ceded to Valdes, these loans should not have been included in the list.

"Indeed, as we view it, what the parties merely agreed to under the arrangement outlined in Exh. "J" was that respondent Valdes would x x x 'take over the total loan of P140,000.00 and pay all of the interests due on the notes' while the heirs of the late Jose Nakpil would continue to live in the disputed property for five (5) years without remuneration save for regular maintenance expenses. This does not mean, however, that if at the end of the five-year period petitioner (Nakpil) failed to reimburse Valdes for his advances, x x x Valdes could already automatically assume ownership of Pulong Maulap. Instead, the remedy of respondents Carlos J. Valdes and Caval Realty Corporation was to proceed against the estate of the late Jose M. Nakpil and/or the property itself." (emphasis supplied)

In the said reconveyance case, we further ruled that complainant's documentary evidence (Exhibits "H", "J" and "L"), which she also adduced in this administrative case, should estop respondent from claiming that he bought the Moran property for himself, and not merely in trust for Jose Nakpil.[18]

It ought to follow that respondent's act of excluding Moran property from the estate which his law firm was representing evinces a lack of fidelity to the cause of his client. If respondent truly believed that the said property belonged to him, he should have at least informed complainant of his adverse claim. If they could not agree on its ownership, respondent should have formally presented his claim in the intestate proceedings instead of transferring the property to his own corporation and concealing it from complainant and the judge in the estate proceedings. Respondent's misuse of his legal expertise to deprive his client of the Moran property is clearly unethical.

To make matters worse, respondent, through his accounting firm, charged the two loans of P65,000.00 and P75,000.00 as liability of the estate, after said loans were obtained by respondent for the purchase and renovation of the property which he claimed for himself. Respondent seeks to exculpate himself from this charge by disclaiming knowledge or privity in the preparation of the list of the estate's liabilities. He theorizes that the inclusion of the loans must have been a mere error or oversight of his accounting firm. It is clear that the information as to how these two loans should be treated could have only come from respondent himself as the

said loans were in his name. Hence, the supposed error of the accounting firm in charging respondent's loans against the estate could not have been committed without respondent's participation. Respondent wanted to "have his cake and eat it too" and subordinated the interest of his client to his own pecuniary gain. Respondent violated Canon 17 of the Code of Professional Responsibility which provides that a lawyer owes fidelity to his client's cause and enjoins him to be mindful of the trust and confidence reposed on him.

As regards the third charge, we hold that respondent is guilty of representing conflicting interests. It is generally the rule, based on sound public policy, that an attorney cannot represent adverse interests. It is highly improper to represent both sides of an issue.[19] The proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter[20] and is applicable however slight such adverse interest may be. It applies although the attorney's intentions and motives were honest and he acted in good faith.[21] However, representation of conflicting interests may be allowed where the parties consent to the representation, after full disclosure of facts. Disclosure alone is not enough for the clients must give their informed consent to such representation. The lawyer must explain to his clients the nature and extent of conflict and the possible adverse effect must be thoroughly understood by his clients.[22]

In the case at bar, there is no question that the interests of the estate and that of its creditors are adverse to each other. Respondent's accounting firm prepared the list of assets and liabilities of the estate and, at the same time, computed the claims of two creditors of the estate. There is clearly a conflict between the interest of the estate which stands as the debtor, and that of the two claimants who are creditors of the estate. In fact, at one instance, respondent's law firm questioned the claims of creditor Angel Nakpil against the estate.

To exculpate himself, respondent denies that he represented complainant in the intestate proceedings. He points out that it was one Atty. Percival Cendaña, from his law firm Carlos J. Valdes & Associates, who filed the intestate case in court. However, the fact that he did not personally file the case and appear in court is beside the point. As established in the records of this case and in the reconveyance case, [23] respondent acted as counsel and accountant of complainant after the death of Jose Nakpil. Respondent's defense that he resigned from his law and accounting firms as early as 1974 (or two years before the filing of the intestate case) is unworthy of merit. Respondent's claim of resignation from his law firm is not supported by any documentary proof. The documents on record [24] only show respondent's resignation from his accounting firm in 1972 and 1974. Even these documents reveal that respondent returned to his accounting firm on July 1, 1976 and as of 1978, the intestate proceedings for the settlement of Jose's estate had not yet been terminated. It does not escape us that when respondent transferred the Moran property to his corporation on February 13, 1978, the intestate proceedings was still pending in court. Thus, the succession of events shows that respondent could not have been totally ignorant of the proceedings in the intestate case.

Respondent claims that complainant knew that his law firm Carlos J. Valdes & Associates was the legal counsel of the estate[25] and his accounting firm, C.J. Valdes & Co., CPAs, was the auditor of both the estate and the two claimants against it.[26] The fact, however, that complainant, as administratrix, did not object to the set-up cannot be taken against her as there is nothing in the records to show that respondent or his law firm explained the legal situation and its consequences to complainant. Thus, her silence regarding the arrangement does not amount to an acquiescence based on an informed consent.

We also hold that the relationship of the claimants to the late Nakpil does not negate the conflict of interest. When a creditor files a claim against an estate, his interest is per se adverse to the estate. As correctly pointed out by complainant, if she had a claim against her husband's estate, her claim is still adverse and must be filed in the intestate proceedings.

Prescinding from these premises, respondent undoubtedly placed his law firm in a position where his loyalty to his client could be doubted. In the estate proceedings, the duty of respondent's law firm was to contest the claims of these two creditors but which claims were prepared by respondent's accounting firm. Even if the claims were valid and did not prejudice the estate, the set-up is still undesirable. The test to determine whether there is a conflict of interest in the representation is probability, not certainty of conflict. It was respondent's duty to inhibit either of his firms from said proceedings to avoid the probability of conflict of interest.

Respondent advances the defense that assuming there was conflict of interest, he could not be charged before this Court as his alleged "misconduct" pertains to his accounting practice.

We do not agree. Respondent is a CPA-lawyer who is actively practicing both professions. He is the senior partner of his law and accounting firms which carry his name. In the case at bar, complainant is not charging respondent with breach of ethics for being the common accountant of the estate and the two creditors. He is charged for allowing his accounting firm to represent two creditors of the estate and, at the same time, allowing his law firm to represent the estate in the proceedings where these claims were presented. The act is a breach of professional ethics and undesirable as it placed respondent's and his law firm's loyalty under a cloud of doubt. Even granting that respondent's misconduct refers to his accountancy practice, it would not prevent this Court from disciplining him as a member of the Bar. The rule is settled that a lawyer may be suspended or disbarred for ANY misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. [27] Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law.

Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, a lawyer should determine his conduct by acting in a manner that would promote public confidence in the integrity of the legal profession. Members of the bar are expected to always live up to the standards embodied in the Code of Professional Responsibility as the relationship between an attorney and his client is highly fiduciary in nature and demands utmost fidelity and good faith. [28] In the case at bar, respondent exhibited less than full fidelity to his duty to observe candor, fairness and loyalty in his dealings and transactions with his clients. [29]

IN VIEW WHEREOF, the Court finds respondent ATTY. CARLOS J. VALDES guilty of misconduct. He is suspended from the practice of law for a period of one (1) year effective from receipt of this Decision, with a warning that a similar infraction shall be dealt with more severely in the future.

Let copies of this Decision be furnished all courts, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant.

SO ORDERED.

Regalado (Chairman), Mendoza and Martinez, JJ., concur.

Melo, J., no part. Previous associate with respondent.

[1]The Moran property consists of a four-bedroom bungalow on a 2,490 square meter lot.

[2] Letter-complaint, dated June 16, 1979; Rollo, pp. 1-9.

[3] Exhibits "H", "J" and "L"; adduced also in the reconveyance case.

[4] Rollo, pp. 44-63.

[5] Attached to his Answer is the relationship agreement, dated February 20, 1976, between complainant and his firms; Rollo, pp. 73-75.

[6] He attached to his Answer his letter of resignation addressed to the managing partner of his accounting firm (Rollo, at P. 76) and the SEC certification that the letter of resignation was duly presented to said body (Rollo, at p. 77).

[7] Rollo, pp. 137-155.

[8] Rollo, pp. 182-197.

[9] Ibid., p. 200.

[10] See Resolution, dated July 18, 1984; Rollo, at p. 305.

[11] Rollo, pp. 306-342.

[12] 7 C. J. S. 966.

[13] Gould v. State, 69 ALR 709.

[14] 5 Am. Jur. 338.

[15] Nakpil v. IAC, 225 SCRA 456.

[16] Ibid.

[17] Nakpil v. IAC, supra.

[18] Ibid., at p. 465.

[19] 7A C. J. S. 206-209, citing U.S. – Brown & Williamson Tobacco Corporation vs. Daniel Intern Corporation, C.A. Ga., 563.

[20] Md. – Rippon vs. Mercantile Safe Deposit & T. Co. of Baltimore, 131 A. 2d 695, 699, 213 Md. 215.

[21] U.S. – Cinema 5 Ltd. vs. Cinerama, Inc., C.A.N.Y., 528 F. 2d 1384.

[22] 7A C. J. S. 215-216; Pa. – Jedwabny vs. Philadelphia Transport Co., 135 A. 2d 252, 390 Pa. 231; 78 S. Ct. 557, 355 U.S. 966, 2 L. Ed. 2d 541.

[23] Nakpil vs. IAC, supra, at p. 458.

[24] Amendment to Amended Articles of Partnership of respondent's accounting firm which contains the following information: (a) on July 17, 1973, a week after Jose Nakpil died, the SEC approved the recall of respondent's withdrawal from his accounting firm in 1972; see Rollo, at pp. 80 - 81; (b) on August 31, 1974, respondent resigned again from his accounting firm; see Respondent's letter of resignation from his accounting firm, dated August 15, 1974; Rollo, at p. 76; (c) on July 1, 1976, barely three months after the filing of intestate case in court, respondent rejoined his accounting firm; Rollo, at p. 89. All the foregoing documents refer to respondent's resignation from his accounting firm. Moreover, it appears from the records that as of 1978, the intestate case was still pending in court.

[25] Rollo, at p. 60.

[26] Ibid., at p. 59.

[27] *Nadayag vs. Grageda*, 237 SCRA 202 [1994].

[28] *Igual vs. Javier*, 254 SCRA 416 [1996].

[29] Canon 15, Code of Professional Responsibility.

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