DAVAO IMPORT DISTRIBUTORS, INC., COMPLAINANT, VS. ATTY. JOHNNY LANDERO, RESPONDENT.

A.C. No. 5116. April 13, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This is a Complaint[1] for Disbarment filed against Atty. Johnny P. Landero (respondent) on the grounds of professional misconduct and violation of Canon 12 of the Code of Professional Responsibility (CPR).

Factual Antecedents

Sometime in August 1997, complainant Davao Import Distributors, Inc. (complainant), through its representative and branch manager, Jimmy Pandili (Pandili), engaged the services of respondent to file a Complaint[2] against Angelita Librando and Juanito Du (Librando and Du, respectively) for the recovery of one split type air-conditioner with replevin and damages. This case was docketed as Civil Case No. 3854 (civil case) before Branch 3 of the Municipal Trial Court in Cities (MTCC) of General Santos City.

Apparently, Librando purchased on installment basis a split-type floor-mounted air-conditioner from complainant in the amount of P86,740.00 which the former installed in her beauty salon located in a commercial building owned by Du. When Librando failed to pay, Pandili went to her salon only to find out that the same had already closed down. Left in the premises, however, was the air-conditioning unit Librando purchased from complainant. Claiming that Du refused to release the unit to complainant as he allegedly intended to retain the same as a lien for Librando's unpaid rentals, complainant filed the said case.

On the scheduled date of pre-trial on November 10,1997, respondent failed to appear. And since he also failed to inform complainant or Pandili of the scheduled pre-trial, they too were unable to attend. As a result, the case was dismissed for non-suit through an Order[3] of even date and Du was allowed to present his evidence ex-parte in support of his counterclaim. On December 9, 1997, the MTCC issued a Decision[4] ordering complainant to pay Du the amounts of P70,000.00 as moral damages, P5,000.00 as attorney's fees and P5,000.00 as litigation expenses.

Without filing a Motion for Reconsideration, complainant appealed the MTCC Decision to the Regional Trial Court (RTC). On July 31, 1998, the RTC issued its Decision[5] affirming the MTCC Decision.

Complainant then disbursed to respondent the amount of P1,900.00 so that he may file a petition for review before the Court of Appeals (CA). Initially, respondent filed a motion for extension of time to file said petition. However, he failed to file the same such that on January 22, 1999 the CA issued a Resolution[6] dismissing the appeal.

Hence, this Complaint for Disbarment where complainant asserts that respondent's actuations of (1) not appearing in the pre-trial of the case, (2) not availing of the legal remedies against the dismissal of the Complaint due to non--suit, and (3) failing to file a petition for review, constitute unprofessional behavior or misconduct and

violations of Canon 12 of the CPR, which merit disciplinary action, if not, disbarment.

Respondent's Defense

In response to the allegations hurled against him, respondent explained that upon receiving Du's Answer with Counterclaims, he was alarmed to find out that the property in question was already in the custody of the sheriff. This was allegedly by reason of an attachment in an another civil action filed by a different person against Librando. Respondent thus conferred with the counsel of Du and requested him to withdraw the counterclaim but was turned down as Du wanted to pursue his claim for damages. He then informed Pandili of the seizure of the property by the sheriff and of Du's decision not to withdraw the counterclaim. The two of them allegedly thereafter agreed to just abandon the case. But when he discussed to Pandili that it is possible that complainant may be assessed for damages, Pandili allegedly panicked and requested him to delay the execution of the judgment on the counterclaim for fear that he would be terminated from his job. Acceding, respondent appealed the judgment on Du's counterclaim but the RTC dismissed the appeal and affirmed the MTCC Decision. When informed about this, Pandili allegedly took from respondent the case folder despite the latter's warning that they only have 15 days to file a Petition for Review with the CA. It was only after 30 days that Pandili returned to him and begged that he file an appeal, again, for fear that he would be terminated by complainant. Out of pity, and despite knowledge of the expiration of the period for filing an appeal, respondent still filed a Motion for Extension of Time to File Petition for Review. Du's counsel opposed the motion pointing out that respondent misled the CA as to the date of his receipt of the assailed RTC Decision so as to make it appear that the said motion was timely filed. The CA thus ordered respondent to explain. It was at his juncture that respondent opted not to file the intended petition anymore allegedly because he would not want to waste the time of the court in resolving a petition which is baseless and admittedly filed out of time.

Proceedings before the Integrated Bar of the Philippines

On May 24, 2008, the Investigating Commissioner, Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) Commissioner Rebecca Villanueva-Maala (Commissioner Villanueva-Maala) recommended that respondent be suspended from the practice of law for three months.[7] This was after she found respondent negligent in the performance of his duty as counsel for complainant and as an officer of the Court. As counsel for complainant, it was respondent's duty to attend the pre-trial, justify the filing of the complaint, and oppose Du's counterclaim. Respondent, however, was remiss in his duty by deliberately failing to attend the pre-trial, which caused prejudice to complainant in that it was declared in default and was assessed for damages. Moreover, while respondent claimed that he did not proceed with the filing of the petition for review with the CA because it was already out of time, the records, on the contrary, show that he was actually granted by the CA an extension of 15 days to file the intended petition. Only that he did not file the same on purpose notwithstanding his receipt from complainant of the amount of P1,900.00 as payment for docket fees.

In a Resolution[8] dated July 17, 2008, the EBP Board of Governors adopted and approved the recommendation of Commissioner Villanueva-Maala but modified the period of suspension by increasing it from three months to six months. Respondent then filed a Motion for Reconsideration,[9] which the IBP Board of Governors denied in a Resolution[10] dated March 21, 2014.

Hence, the transmission of the whole record of the case to this Court for its final action.

Our Ruling

We agree with complainant that respondent displayed unprofessional behavior and misconduct and violated the CPR.

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Respondent himself admitted that he deliberately did not appear at the scheduled pre-trial conference in Civil Case No. 3854 despite notice and that he did not file a petition for review after receiving from his client the payment for docket fees and after being granted by the CA an extension of time to file the same. From these facts alone, it cannot be denied that respondent's acts constitute misconduct which at the same time amount to violations of the CPR.

The Court has already held in People v. Sevilleno[11] and reiterated in Consolidated Farms, Inc. v. Atty. Alpon, Jr.[12] that Canon 18[13] of the CPR requires every lawyer to serve his client with utmost dedication, competence and diligence. He must not neglect a legal matter entrusted to him and his negligence in this regard renders him administratively liable.

As complainant's counsel in Civil Case No. 3854, respondent is duty-bound to handle the same with zeal and all due diligence. Hence, even assuming that there is truth to his allegation that he and Pandili already agreed to abandon the case, he should have still attended the scheduled pre-trial to formally move for its withdrawal. However, despite his awareness that his absence in the pre-trial would result to a dismissal of the case with prejudice and to a declaration of his client's default with respect to Du's counterclaim, respondent still deliberately did not appear thereat. It is worth noting that at that time, Du had already filed an Answer with Counterclaim. If respondent was indeed concerned about his client's cause, he should have, under the circumstances, observed the mandate of Section Rule 17 of the Rules of Court. It provides:

> RULE 17
> Dismissal of Actions
>
> Section 2. Dismissal upon motion of plaintiff - Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiffs motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court. (Emphasis supplied)

Had respondent moved for dismissal under the above-quoted rule, the case filed by complainant would have been dismissed without prejudice thereby giving it the alternative of re-filing the case should there be a change in circumstances. But due to respondent's absence and also his failure to inform complainant of the scheduled pre-trial, the Complaint was dismissed based on Section 3[14] of the same Rule. This has the effect of an adjudication on the merits which, needless to state, curtailed the right of the complainant to refile the case. Moreover, had respondent been present at the pre-trial and had informed complainant of the same, the latter would not have been declared in default and, therefore, would have had the opportunity to present evidence to refute Du's claim for damages against it. To stress, an attorney is bound to protect his client's interest to the best of his ability and with utmost diligence.[15] This, respondent failed to do in utter disregard of Canon 18 of the CPR.

Anent respondent's failure to file the Petition for Review despite being granted an extension of time to do so, his explanation is as follows:

> o) That because of pity I filed an extension of time to file a petition for review alleging that the plaintiff had just received a decision and the filing is within the reglementary period copy furnished the counsel of Juanito Du[.] This was opposed by bis counsel alleging [I misled] the court [as] to the correctness of the date of receipt of said decision. So the court issued an order directing the undersigned respondent to explain, x x x Because of

> said opposition the herein counsel decided not to proceed [with] the filing of [a] petition for review considering it was already filed out of time and it will only waste the golden time of the court in reviewing a baseless appeal, so the herein respondent advised the manager to be man enough to accept the truth, otherwise the herein respondent would be dragged deeper in helping him;[16]

The Court finds respondent's reason to be unacceptable if not downright disrespectful to the courts. The same only underscores his blatant violation of Rule 12.03, Canon 12 of the CPR, which states:

> CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.
>
> x x x x x x x x x
>
> Rule 12.03 - A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Respondent needs lecturing that sympathy towards a client does not justify his act of stating in his motion for extension that he received the RTC Decision at a later date to make it appear that the filing of the said motion is well-within the period for filing an appeal. Given his years of experience in the legal profession, respondent should be well aware that "[a] lawyer is first and foremost an officer of the: court. Thus, while he owes his entire devotion to the interest and causes of his client, he must ensure that he acts within the bounds of reason and common sense, always aware that he is an instrument of truth and justice. More importantly, as an officer of the court and its indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to its processes. Thus, any act on his part which tends visibly to obstruct, pervert or impede and degrade the administration of justice constitutes professional misconduct calling for the exercise of disciplinary action against him."[17]

All told, the Court finds respondent to have committed acts violative of Canons 12 and 18 of the CPR.

WHEREFORE, the Court ADOPTS the July 17, 2008 Resolution of the Board of Governors of the Integrated Bar of the Philippines. Atty. Johnny P. Landero is ordered SUSPENDED from the practice of law for six (6) months effective immediately. He is directed to report the date of his receipt of this Resolution to enable this Court to determine when his suspension shall take effect.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

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[1] Rollo, pp. 3-7

[2] Id. at 8-12.

[3] Id. at 13.

[4] Id. at 15-16.

[5] Id. at 17-18.

[6] Id. at 20.

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[7] See Report and Recommendation, id. at 65-70.

[8] Id. at 64.

[9] Id. at 73-77.

[10] Id. at 87-88.

[11] 365 Phil. 63, 76 (1999).

[12] 493 Phil. 16, 20(2005).

[13] CANON 18 - A lawyer shall serve his client with competence and diligence.

[14] Section 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. [Emphasis supplied]

[15] Consolidated Fams Inc. v. Atty. Alpon, Jr., supra note 12 at 21; citing Del Rosario v. Court of Appeals, 199 Phil. 367, 378 (1982) and Tan v. Atty. Lapak, 402 Phil. 920, 929 (2001).

[16] Rollo, p. 26.

[17] Bantolo v. Atty. Castillon, Jr., 514 Phil. 628, 633 (2005).

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