

JOSE ALCALA AND AVELINA IMPERIAL, PETITIONERS, VS. HONESTO DE VERA, RESPONDENT.

A.C. No. 620. March 21, 1974

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

On May 19, 1964, Jose Alcala (now deceased) and his wife Avelina Imperial, filed this present petition for disbarment against respondent Honesto de Vera, a practicing attorney of Locsin, Albay, who was retained by them as their counsel in civil case 2478 of the Court of First Instance of Albay, entitled: "Ray Semenchuk vs. Jose Alcala."

Complainants charge Atty. Honesto de Vera with gross negligence and malpractice: 1) for having maliciously and deliberately omitted to notify them of the decision in civil case 2478 resulting in the deprivation of their right to appeal from the adverse judgment rendered against them; and 2) for respondent's indifference, disloyalty and lack of interest in petitioners' cause resulting to their damage and prejudice.

Respondent attorney, in his answer to these charges, asserted that he notified his clients of the decision in question and that he defended complainants' case to the best of his ability as demanded by the circumstances and that he never showed indifference, lack of interest or disloyalty to their cause.

The Solicitor General, to whom this Court referred this case for investigation, report and recommendation, substantially found the following:

Civil case 2478 was an action for annulment of a sale of two parcels of land (lots Nos. 1880 and 1883 covered by TCT Nos. T-12392 and 12393 respectively) filed by the vendee, Ray Semenchuk, against the vendors, spouses Alcala, on the ground that lot 1880 "could not be located or did not exist", and for the recovery of damages and attorney's fees.

Respondent attorney, whose legal services were engaged by complainants, filed an answer denying the material allegations of the above-mentioned complaint and setting up a counterclaim for the balance of the purchase price of the lots sold, the expenses of notaries, internal revenue, registration, etc. plus damages and attorney's fees.

On April 17, 1963, the trial court rendered judgment rescinding the contract of sale on the ground that the vendee Semenchuk was not able to take material possession of lot 1880 it being in the possession of a certain Ruperto Ludovice and his brothers who have been occupying the land for a number of years. The dispositive portion of the judgment reads:

"WHEREFORE, judgment is hereby rendered:

(a)

Declaring the deed of sale (Exhibit A) rescinded;

(b)

Directing the plaintiff to deliver to the defendants the possession of Lot No. 1883;

(c)

Ordering the defendants to return to the plaintiff the sum of P1,000.00 after deducting the amount of P250.00 which is the 'consideration in the deed of sale of Lot No. 1854; and

(d)

Without pronouncement as to costs." (p. 11, rollo).

On April 19, 1963, respondent Atty. de Vera received a copy of the decision but he failed to inform his clients of the judgment against them. On July 17, 1963, a sheriff came to complainants' house to serve a writ of execution issued in said case. Totally caught by surprise, Jose Alcala immediately wrote to the trial court and inquired for the status of case 2478. The Deputy Clerk of Court, in his reply dated July 22, 1963, informed Alcala that the case was decided on April 17, 1963, that a copy of the decision was received by respondent attorney on April 19, 1963, and that since no appeal was taken, a writ of execution was issued by the trial court on motion of the plaintiff Semenchuk.

On September 12, 1963, spouses Alcala instituted civil case 2723 for damages against Atty. Honesto de Vera for having failed to inform them of the decision in case 2478 as a result of which they lost their right to appeal from said decision. The trial court that heard case 2723 found for a fact that respondent did not inform his clients of the decision rendered in case 2478; however, it denied damages for lack of proof that the spouses Alcala suffered any damage as a result of respondent's failure to notify them of the aforesaid decision. The judgment in case 2723 was appealed to the Court of Appeals[1] by respondent herein but the same was affirmed by said appellate court.

Not content with having filed case 2723, complainants instituted this complaint for disbarment against their former counsel.

- "Indifference, disloyalty, and lack of interest" of respondent in the handling of complainants' defense in civil case 2478.

The basis of this particular charge is the alleged failure of Atty. de Vera to present at the trial of case 2478 certain documents which according to the complainants could have proven that lot 1880 actually existed, to wit: a sketch of lot 1880 prepared by the vendee, Semenchuk, himself (Exh. Case); technical description of lot 1880 taken from complainants' certificate of title (Exh. M-Adm. Case); sketch plan of lot 1880 in relation to the adjoining lots prepared by surveyor Miguel N. Romero (Exh. N-Adm. Case); a receipt for P10.00 issued by surveyor Romero for the preparation of the sketch, Exh. N (Exh. O-Adm. Case) - all of which documents were turned over by Jose Alcala to respondent before the trial of case 2478.

We agree with the Solicitor General that there is no merit to this particular charge.

The records of case 2478 show that upon agreement of the parties and their attorneys, the trial court appointed a commissioner to relocate lot 1880 and after conducting such relocation, the commissioner reported to the Court that the lot existed, but that the same was in the possession of other persons. Inasmuch as the existence of lot 1880 had already been verified by the commissioner, it was therefore unnecessary for respondent attorney to introduce in evidence Exhibits "L", "M", "N", and "O", the purpose of which was merely to prove the existence of said lot. If the complaint for rescission prospered it was because of complainant Alcala's failure to comply with his obligation of transferring the material or physical possession of lot 1880 to the vendee and for no other reason; hence, complainants had nobody to blame but themselves. The fact that the plaintiff, Semenchuk, was not awarded any damages, attorney's fees, and costs shows that respondent attorney exerted his utmost to resist

plaintiff's complaint.

- Gross negligence and malpractice committed by respondent for failure to inform his clients of the decision in civil case 2478: -

The matter in dispute with respect to this specific charge is whether or not respondent notified his clients, the complainants herein, about the decision in case 2478. Respondent claims that he did inform his clients of the decision; complainants insist the contrary.

We agree with the Solicitor General that there is sufficient, evidence on hand to prove that respondent neglected to acquaint his clients of the decision in case 2478.

As stated in the Solicitor General's report, the reaction of complainant Jose Alcala when the writ of execution in said civil case was served upon him and his wife by a sheriff was such that it betrayed a total unawareness of the adverse decision. The evidence shows that when he was told about the sheriff's visit, Jose Alcala immediately inquired from the trial Court the reason for the writ of execution and it was only then that he was informed that a decision had been rendered, lawyer received a copy thereof since April 19, 1963, and because no appeal was taken the judgment became final and executory. Alcala then sought the help of his brother, Atty. Ernesto Alcala, in Manila and the latter wrote to respondent inquiring as to what steps were taken, if any, to prosecute an appeal from the decision in question but respondent chose not to answer the letter. Thereafter, Alcala instituted an action for damages and filed the instant complaint for disbarment.

As aptly observed by the Solicitor General:

"Again, we do not think petitioner Alcala would have felt so aggrieved and embittered by the loss of his right to appeal the decision in Civil Case No. 2478 so as to take all these legal steps against respondent, with all the attendant trouble and expense in doing so, if it is not true, as he alleged, that the latter indeed did not notify him of said decision. We believe and so submit, therefore, that respondent really failed to inform petitioners of the decision in Civil Case No. 2478, and this was also the finding made by the Court of First Instance of Albay in its decision in Civil Case No. 2723 for damages filed by petitioners against respondent, and by the Court of Appeals in the appeal taken by respondent from said decision." (pp.38-39, rollo)

Is respondent's failure to notify his clients of the decision sufficient cause for his disbarment? Complainants answer the question in the affirmative, while on the other hand, respondent prays that he be exonerated because, according to him, granting *arguendo* that he failed to inform the complainants about the decision, the truth is that said decision was fair and just and no damage was caused to complainants by reason thereof.

On this point, We agree with the following appraisal of the evidence by the Solicitor General:

"In this connection, it is indeed true that although both the Court of First Instance of Albay, in Civil Case No. 2723 for damages filed by petitioners against respondent Atty. De Vera (pp. 30-34, Exh. 'D', *id.*), and the Court of Appeals, In C.A./G.R. No. 35267-R (the appeal taken by respondent from the decision of the trial court in C.C. No. 2623), found that respondent actually did not inform petitioners of the decision in Civil Case No. 2478, still both courts also held that petitioners did not sustain any damages as a result of said decision, for which reason the trial court dismissed petitioners' action for damages against respondent, which dismissal was affirmed by the Court of Appeals. We quote the finding of the Court of First Instance of Albay in its decision in Civil Case No. 2723 in this regard:

The second issue that has to be passed upon by the Court is whether the plaintiffs are entitled to damages. On this issue, the Court finds that the plaintiffs cannot recover damages from defendant Atty. Honesto de Vera. No evidence has been presented that they sustained damages of the decision. Neither it has been shown that the decision is not supported by the facts and the law applicable to the case. Consequently, the plaintiffs are not entitled to damages because of the failure of Atty. Honesto de Vera to inform them of the decision.

'An attorney is not bound to exercise extraordinary diligence, but only a reasonable degree of care and skill, having reference to the character of the business he undertakes to do. Fallible like any other human being, he is answerable to every error or mistake, and will be protected as long as he acts honestly and in good faith to the best of his skill and knowledge. Moreover, a party seeking damages resulting from a judgment adverse to him which became final by reason of the alleged fault or negligence of his lawyer must prove his loss due to the injustice of the decision. He cannot base his action on the unsubstantiated and arbitrary supposition of the injustice of the decision. (Tuzon vs. Donato. 58 O.G 6480)(Exh 'D'.. id.; pp. 33-34)

Significantly, petitioners did not appeal from the above decision, which is an implied acceptance by them of the correctness of the findings therein. Instead, it was respondent Atty. De Vera who appealed said decision to the Court of Appeals (C.A-G.R. No. 35267-R), and the latter Court, although agreeing with the finding of the trial court that respondent really did not inform petitioners of the decision in Civil Case No. 2478 (Exh. 'T'), affirmed, however, the lower court's finding that petitioners were not entitled to the damages claimed by them by reason of respondent's failure to notify them of the decision in Civil Case No. 2478. x x x. While the rule of *res judicata* in civil or criminal cases is not, strictly speaking, applicable in disbarment proceedings, which is neither a civil or a criminal proceeding intended to punish a lawyer or afford redress to private grievances but is a proceeding *sui generis* intended to safeguard the administration of justice by removing from the legal profession a person who has proved himself unfit to exercise such trust (p. 207, Martin, Legal and Judicial Ethics; Re Keenan, 86 ALR 679; De Jesus-Paras vs. Vailoces, Adm. Case No. 439, April 12, 1961; In re Montague & Dominguez, 3 Phil. 577, 588), still we consider the findings of the trial court as well as of the Court of Appeals in the damage suit filed by petitioners against respondent Atty. De Vera based on the same grounds now invoked in this disbarment case relevant and highly persuasive in this case especially as petitioners themselves have, as already observed, accepted and admitted the correctness of said findings. And we may add that we ourselves agree with respondent that petitioners had not been prejudiced or damaged in any way by the decision in Civil Case No. 2478, but that said decision appears in fact to be more favorable to them than could have been the case if the trial court had applied the law strictly against them in said case, x x x." (pp. 17--19, Report, pp. 39-41, rollo; Italics supplied).

The Solicitor General's Report continues and says:

"True it is that petitioners do not appear to have suffered any material or pecuniary damage by the failure of respondent Atty. De Vera to notify them of the decision in Civil Case No. 2478. It is no less true, however, that in failing to inform his clients, the petitioners, of the decision in said civil case, respondent failed to exercise 'such skill, care, and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment' (7 C.J.S. 979). The relationship of lawyer-client being one of confidence, there is ever present the need for the client's being adequately and fully informed and should not be left in the dark as to the mode and manner in which his interests are being defended. It is only thus that their faith in counsel may remain unimpaired (Oparel, Sr. vs. Aberia, Adm. Case No. 595, July 30, 1971). As it happened in this case, because of respondent's failure to notify petitioners of the decision in Civil Case No. 2478, the latter were entirely caught by surprise, resulting in shock and mental and emotional disturbance to them, when the sheriff suddenly showed up in their home with a writ of execution of a judgment that they never knew had been rendered in the case, since their lawyer, the respondent, had totally failed to inform them about the same. x x x." (pp. 23-24, Report, pp. 45-46, rollo; italics supplied)

We concur with the above-quoted observations and add that the correctness of the decision in case 2478 is no ground for exonerating respondent of the charge but at most will serve only to mitigate his liability. While there is no finding of malice, deceit, or deliberate intent to cause damage to his clients, there is, nonetheless, proof of negligence, inattention, and carelessness on the part of respondent in his failure to give timely notice of the decision in question. Fortunately for respondent, his negligence did not result in any material or pecuniary damage to the herein complainants and for this reason We are not disposed to impose upon him what may be considered in

a lawyer's career as the extreme penalty of disbarment. As stated in the very early case of *In Re Macdougall*:

"The disbarment of an attorney is not intended as a punishment, but is rather intended to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable; men in whom courts and clients may repose confidence. This purpose should be borne in mind in the exercise of disbarment, and the power should be exercised with that caution which the serious consequences of the action involves.

"The profession of an attorney is acquired after long and laborious study. It is a lifetime profession. By years of patience, zeal, and ability, the attorney may have acquired a fixed means of support for himself and family, of great pecuniary value, and the deprivation of which would result in irreparable injury." (3 Phil. 70, 77-78)

In the words of former Chief Justice Marshall of the United States Supreme Court:

"On one hand, the profession of an attorney is of great importance to an individual and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained and that its harmony with the bench should be preserved. For these objects, some controlling power, some discretion, ought to reside in the Court. This discretion, ought to be exercised with great moderation and judgment; but it must be exercised. (Ex parte Burr. 9 Wheat 529; Martin, Legal & Judicial Ethics 1972 Ed. p. 213)

Although respondent's negligence does not warrant disbarment or suspension under the circumstances of the case, nonetheless it cannot escape a rebuke from Us as we hereby rebuke and censure him, considering that his failure to notify his clients of the decision in question manifests a lack of total dedication or devotion to their interest expected of him under his lawyer's oath and the Canons of Professional Ethics. Respondent's inaction merits a severe censure from the Court.

WHEREFORE, on the basis of the evidence, the report and recommendation of the Solicitor General, and the fact that this appears to be the first misconduct of respondent in the exercise of his legal profession, We hereby hold said respondent GUILTY only of simple negligence in the performance of his duties as a lawyer of complainants, and We hereby SEVERELY CENSURE him. Let this decision be noted in respondent's record - as a member of the Bar - in this Court.

SO ORDERED.

Makalintal, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, Esguerra, Fernandez, and Aquino, JJ., concur.

[1] C.A. G.R. No. 35287-R.

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