

FEDERICO N. RAMOS, COMPLAINANT, VS. ATTY. PATRICIO A. NGASEO, RESPONDENT.

A.C. No. 6210. December 09, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is a complaint for suspension of respondent Atty. Patricio A. Ngaseo for violation of the Code of Professional Responsibility and Article 1491 of the Civil Code by demanding from his client, complainant Federico N. Ramos, the delivery of 1,000 square meters of land, a litigated property, as payment for his appearance fees.

The facts as narrated by the complainant are as follows:

Sometime in 1998, complainant Federico Ramos went to respondent Atty. Patricio Ngaseo's Makati office to engage his services as counsel in a case^[1] involving a piece of land in San Carlos, Pangasinan. Respondent agreed to handle the case for an acceptance fee of P20,000.00, appearance fee of P1,000.00 per hearing and the cost of meals, transportation and other incidental expenses. Complainant alleges that he did not promise to pay the respondent 1,000 sq. m. of land as appearance fees.^[2]

On September 16, 1999, complainant went to the respondent's office to inquire about the status of the case. Respondent informed him that the decision was adverse to them because a congressman exerted pressure upon the trial judge. Respondent however assured him that they could still appeal the adverse judgment and asked for the additional amount of P3,850.00 and another P2,000.00 on September 26, 2000 as allowance for research made.^[3]

Although an appeal was filed, complainant however charges the respondent of purposely failing to submit a copy of the summons and copy of the assailed decision. Subsequently, complainant learned that the respondent filed the notice of appeal 3 days after the lapse of the reglementary period.

On January 29, 2003, complainant received a demand-letter from the respondent asking for the delivery of the 1,000 sq. m. piece of land which he allegedly promised as payment for respondent's appearance fee. In the same letter, respondent also threatened to file a case in court if the complainant would not confer with him and settle the matter within 30 days.

Respondent alleged that sometime in the late 1997, a former client, Federico Ramos and his brother, Dionisio, went to his Makati office to engage his professional services in connection with a 2-hectare parcel of land situated in San Carlos, Pangasinan which the complainant's family lost 7 years earlier through an execution sale in favor of one Alfredo T. Castro. Complainant, who was deaf and could only speak conversational Tagalog haltingly, was assisted by his brother Dionisio. They came all the way from Pangasinan because no lawyer in San Carlos City was willing to handle the case. Complainant, through Dionisio, avers that he has consulted 2 local lawyers but did not engage their services because they were demanding exorbitant fees. One local lawyer was willing to handle the case for at least one-half of the land involved as his attorney's fee, plus cash expenses, while the other asked

for ¼ of the land in addition to a large sum of money. Respondent agreed to handle the case for an acceptance fee of P60,000.00 plus an appearance fee of P3,000.00 per hearing. Complainant told him that he would consult his siblings on the matter.

Six months later, i.e., in April 1998, complainant, assisted by one Jose Castillo, went to respondent's office to discuss the legal fees. Complainant, through Castillo, told respondent that he was willing to pay an acceptance fee of P40,000.00, P20,000.00 of which shall be paid upon engagement and the remaining P20,000.00 to be paid after their treasure hunt operations in Nueva Viscaya were terminated. Further, complainant offered, in lieu of P3,000.00 per appearance, 1,000 sq. m. of land from the land subject matter of the case, if they win, or from another piece of property, if they lose. In addition, complainant also offered to defray the expenses for transportation, meals and other incidental expenses. Respondent accepted the complainant's offer.

Respondent claims that after the trial court dismissed Civil Case No. SCC 2128, he filed a timely notice of appeal and thereafter moved to be discharged as counsel because he had colon cancer. Complainant, now assisted by one Johnny Ramos, implored respondent to continue handling the case, with an offer to double the 1,000 sq. m. piece of land earlier promised and the remaining balance of P20,000.00 acceptance fee. Johnny Ramos made a written commitment and gave respondent's secretary P2,000.00 of the P3,850.00 expenses for the preparation of the appellant's brief.

On July 18, 2001, the Court of Appeals rendered a favorable decision ordering the return of the disputed 2-hectare land to the complainant and his siblings. The said decision became final and executory on January 18, 2002. Since then complainant allegedly failed to contact respondent, which compelled him to send a demand letter on January 29, 2003.

On February 14, 2003, complainant filed a complaint before the IBP charging his former counsel, respondent Atty. Ngaseo, of violation of the Code of Professional Responsibility for demanding the delivery of 1,000 sq. m. parcel of land which was the subject of litigation.

In a report dated July 18, 2003, IBP Commissioner Rebecca Villanueva-Maala found the respondent guilty of grave misconduct and conduct unbecoming of a lawyer in violation of the Code of Professional Responsibility and recommended that he be suspended from the practice of law for 1 year.[4]

On August 30, 2003, the IBP Board of Governors passed Resolution No. XVI-2003-47 the full text of which reads:[5]

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, with modification, and considering that respondent have violated the Code of Professional Responsibility for grave misconduct and conduct unbecoming of a lawyer Atty. Patricio A. Ngaseo is hereby SUSPENDED from the practice of law for six (6) months.

On December 11, 2003, respondent filed a petition for review assailing IBP Resolution No. XVI-2003-47 for having been issued without or in excess of jurisdiction.[6]

Respondent argues that he did not violate Article 1491 of the Civil Code because when he demanded the delivery of the 1,000 sq. m. of land which was offered and promised to him in lieu of the appearance fees, the case has been terminated, when the appellate court ordered the return of the 2-hectare parcel of land to the family of the complainant.

Respondent further contends that he can collect the unpaid appearance fee even without a written contract on the

basis of the principle of quantum meruit. He claims that his acceptance and appearance fees are reasonable because a Makati based legal practitioner, would not handle a case for an acceptance fee of only P20,000.00 and P1,000.00 per court appearance.

Under Article 1491(5) of the Civil Code, lawyers are prohibited from acquiring either by purchase or assignment the property or rights involved which are the object of the litigation in which they intervene by virtue of their profession.[7] The prohibition on purchase is all embracing to include not only sales to private individuals but also public or judicial sales. The rationale advanced for the prohibition is that public policy disallows the transactions in view of the fiduciary relationship involved, i.e., the relation of trust and confidence and the peculiar control exercised by these persons.[8] It is founded on public policy because, by virtue of his office, an attorney may easily take advantage of the credulity and ignorance of his client and unduly enrich himself at the expense of his client.[9] However, the said prohibition applies only if the sale or assignment of the property takes place during the pendency of the litigation involving the client's property. Consequently, where the property is acquired after the termination of the case, no violation of paragraph 5, Article 1491 of the Civil Code attaches.

Invariably, in all cases where Article 1491 was violated, the illegal transaction was consummated with the actual transfer of the litigated property either by purchase or assignment in favor of the prohibited individual. In *Biascan v. Lopez*, respondent was found guilty of serious misconduct and suspended for 6 months from the practice of law when he registered a deed of assignment in his favor and caused the transfer of title over the part of the estate despite pendency of Special Proceedings No. 98037 involving the subject property.[10] In the consolidated administrative cases of *Valencia v. Cabanting*,[11] the Court suspended respondent Atty. Arsenio Fer Cabanting for six (6) months from the practice of law when he purchased his client's property which was still the subject of a pending certiorari proceeding.

In the instant case, there was no actual acquisition of the property in litigation since the respondent only made a written demand for its delivery which the complainant refused to comply. Mere demand for delivery of the litigated property does not cause the transfer of ownership, hence, not a prohibited transaction within the contemplation of Article 1491. Even assuming arguendo that such demand for delivery is unethical, respondent's act does not fall within the purview of Article 1491. The letter of demand dated January 29, 2003 was made long after the judgment in Civil Case No. SCC-2128 became final and executory on January 18, 2002.

We note that the report of the IBP Commissioner, as adopted by the IBP Board of Governors in its Resolution No. XVI-2003-47, does not clearly specify which acts of the respondent constitute gross misconduct or what provisions of the Code of Professional Responsibility have been violated. We find the recommended penalty of suspension for 6 months too harsh and not proportionate to the offense committed by the respondent. The power to disbar or suspend must be exercised with great caution. Only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and member of the bar will disbarment or suspension be imposed as a penalty.[12] All considered, a reprimand is deemed sufficient and reasonable.

WHEREFORE, in view of the foregoing, respondent Atty. Patricio A. Ngaseo is found guilty of conduct unbecoming a member of the legal profession in violation of Rule 20.04 of Canon 20 of the Code of Professional Responsibility. He is REPRIMANDED with a warning that repetition of the same act will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Docketed as Civil Case No. SCC-2128, RTC San Carlos City, Branch 57, entitled: Teofilo Ramos, et al. v. Alfredo Castro.

[2] Rollo, p. 4.

[3] Id., Annex “L” at p. 131 and Annex “M” at p. 132.

[4] Report and Recommendation by the Investigating Commissioner, Rollo, pp. 334-340.

[5] Rollo, p. 333.

[6] Id., p. 345.

[7] ART. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

...

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

[8] Paras, Civil Code, Vol. V, 1973, p. 70.

[9] In re: Suspension from the Practice of Law in the Territory of Guam of Atty. Leon G. Maquera, Bar Matter No. 793, 30 July 2004.

[10] A.C. No. 4650, 14 August 2003, 409 SCRA 1, 8.

[11] A.C. No. 1302, 26 April 1991, 196 SCRA 302, 311.

[12] Montano v. Integrated Bar of the Philippines, A.C. No. 4215, 21 May 2001, 358 SCRA 1, 9.

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