

ALICIA E. ASTURIAS, COMPLAINANT, VS. ATTYS. MANUEL SERRANO AND EMILIANO SAMSON, RESPONDENTS.

A.C. NO. 6538 (Formerly CBD Case No. 03-1159). November 25, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

For consideration is the Petition for Review, filed on September 16, 2004 before the Office of the Bar Confidant by complainant Dr. Alicia E. Asturias (Dr. Asturias), of the dismissal by the Board of Governors of the Integrated Bar of the Philippines (IBP) of her complaint against respondents Attys. Manuel Serrano and Emiliano Samson, for conduct unbecoming of a lawyer and professional misconduct, which dismissal this Court NOTED by Resolution of October 4, 2004, hence, it considered the case closed and terminated.

The antecedents of the case are as follows:

Dr. Asturias filed a complaint for specific performance and damages against Fedman Development Corporation (FDC) and Fedman Suite Condominium Corporation (FSCC) before the Regional Trial Court (RTC) of Makati City where it was docketed as Civil Case No. 16640.

Branch 60 of the Makati RTC found for Dr. Asturias and against FDC and FSCC by Decision dated April 6, 1992.

Only the defendant FDC appealed the decision of the trial court to the Court of Appeals which, by Decision of July 31, 1998, affirmed it with modification, disposing as follows:

WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATION that the complaint against Fedman Development Corporation be as it is hereby DISMISSED, jurisdiction over it being exclusively lodged at the Housing and Land Use Regulatory Board.

SO ORDERED.[1] (Underscoring supplied)

The defendant FSCC not having appealed the decision of the trial court against it, it became final and executory. On Dr. Asturias' motion, the trial court issued on August 10, 1999 a writ of execution of the decision.

Sometime in March 2003, the sheriff assigned at the RTC of Makati, Branch 60 served a Notice of Garnishment dated February 20, 2003 upon unit owners including respondents, tenants, and occupants of the FSCC building.[2]

FSCC, through counsel Lagera and Avelino, filed via registered mail on July 1, 2003 a Petition to Annul [the RTC] Judgment under Rule 47 of the Rules of Court[3] before the Court of Appeals where it was docketed as CA-GR SP No. 78104, alleging, inter alia, that

1.1 No motion for new trial, appeal, petition for relief from judgment or other appropriate remedies could have been availed of by petitioners because the assailed RTC Decision has attained finality without petitioners' fault when it was discovered in March 2003. This petition has been seasonably filed before petitioners have been barred by estoppel and laches, and clearly, within four (4) years from knowledge of the assailed decision, writ of execution, subsequent court orders and processes.[4] (Underscoring supplied)

The verification in the petition, which was signed by respondents-unit owners and members of the Board of the FSCC-representatives of the building owners and subscribed and sworn to before Notary Public Venice A. Andaya on July 1, 2003, read:

We, MANUEL SERRANO and EMILIANO SAMSON, both of legal age, Filipino, under oath, hereby depose and state that:

- We are members of FSCC Board of Directors and unit-owners of Fedman Suites Building;
- We are duly authorized to sign the Petition for Annulment under Rule 47 of the Rules of Court re: Asturias case Civil Case 16640 to be filed before the Court of Appeals, as FSCC Board of Director (sic) and as representatives of Fedman Suites building unit-owners as shown by the Secretary's Certificate dated 30 June 2003 attached as Annex "A";
- We caused the preparation of the foregoing petition, have read and fully understood its contents and hereby verify and affirm that everything stated therein is true and correct to the best of our personal knowledge and based on authentic records;

x x x[5] (Underscoring supplied)

On account of the above-quoted contents of the verification vis a vis the above-quoted paragraph 1.1 of FSCC's Petition for Annulment of Judgment, Dr. Asturias (hereafter "complainant") lodged before the IBP an administrative complaint against respondents, alleging that they committed perjury by knowingly making an untruthful statement under oath when they alleged the above-quoted paragraph 1.1 in the Petition filed before the CA.

Complainant contended that the above-quoted allegation in FSCC's petition before the appellate court is false because FSCC had been duly notified of the assailed RTC Decision, "at the very latest on August 11, 1999," she citing the Sheriff's Report[6] dated October 1, 1999 showing that copies of the July 31, 1998 Decision of the appellate court and the Writ of Execution issued by the trial court were personally served upon Norma Estella, Administrative Secretary of FSCC.

Complainant adopted and repleaded in toto in her administrative complaint her criminal Complaint-Affidavit for perjury, including all its annexes, which she instituted against respondents before the Office of the City Prosecutor of Manila on August 4, 2003 where it was docketed as I.S. No. 03H-21983.

Respondents, in their Answer to the administrative complaint, adopted too their Counter-Affidavit dated September 29, 2003 and Rejoinder Affidavit dated October 15, 2003 which they filed in the criminal complaint.

During the Mandatory Preliminary Conference conducted by the IBP on January 8, 2004, complainant, together with her counsel Atty. Pitero M. Reig, and respondent Atty. Emiliano Samson on his and his co-respondent Atty. Manuel Serrano's behalf, appeared before Commissioner Demaree J. B. Raval, Investigating Officer of the IBP Commission on Bar Discipline ("CBD").[7]

Defined by the parties before the CBD as the sole issue was whether respondents, as stated in the Petition to Annul Judgment, only came to know of the RTC decision on March 2003. [8]

In her position paper[9] submitted to the CBD, complainant invited attention to the fact that aside from the Sheriff's Report, the Motion to Archive Case/Suspend Proceedings[10] which FSCC filed before the appellate court (on December 29, 2003) in the Petition for Annulment of Judgment showed that FSCC knew of the decision of the trial court prior to March 2003, its alleged date of discovery of its existence, for in said Motion, FSCC stated that:

The Decision was received by petitioner Fedman Suites Condominium Corporation thru its counsel, Atty. Quintin Bautista, on July 20, 1992 as evidenced by a machine copy of the registry return receipt, copy of which is attached hereto as Annex "A". The registry return receipt was delivered back and received by the Regional Trial Court of Makati City, Branch 60 in so far as petitioner is concerned on July 22, 1992 as shown by the stamp of receipt appearing on the right side of the registry receipt. The registry return receipt showing dates of receipt of decision with respect to Fedman Development Corporation and Alicia Asturias are attached as Annexes "B" and "C" respectively.[11]

Complainant thus posited that respondents committed violations of the Code of Professional Responsibility[12] and the Lawyer's Oath and must consequently be suspended from practice, if not disbarred.

In his Investigation Report[13] dated May 24, 2004, CBD Investigating Commissioner Raval recommended the dismissal of the complaint for lack of merit in light of the foregoing considerations:

Firstly, in attempting to prove the dishonesty of Attorneys Serrano and Samson, Asturias submits as evidence the verification within a Petition praying for the annulment of the judgment or final orders and resolutions of the Regional Trial Court (RTC) in the case entitled: Alicia G. Asturias vs. Fedman Development Corp., and Fedman Suites Condominium Corporation and docketed as Civil Case No. 16640 (Annex "A", Complaint). However, upon closer examination of the said evidence, the same may not be considered as a concrete manifestation of any alleged act of perjury on the part of Attorneys Serrano and Samson, inasmuch as the contention of Asturias is based upon the erroneous premise that Attorneys Serrano and Samson had actually received a copy of the RTC decision on August 11, 1999. However, records do not show that Attorneys Samson (should have been Serrano) and Samson actually received the RTC decision on August 11, 1999. Absent any showing that Attorneys Serrano and Samson actually received the RTC decision on August 11, 1999, it cannot therefore be said that they made a false statement when they made the contested assertions in paragraph 1.1 of the Petition in CA-GR No. SP-78104.

Secondly, even assuming that there was some shade of falsehood in the claim made by Attorneys Serrano and Samson, still the charge of perjury must fail. Mere assertion of a falsehood is not enough to amount to perjury. The assertion must be deliberate and willful (*Saavedra, Jr. v. Department of Justice, et al.*, G.R. No. 93173, September 15, 1993).

In the present case, even if we assume that the claim that Attorneys Serrano and Samson discovered the RTC decision only on March 2003 is false, still records do not show that Asturias had convincingly shown that the falsehood had been done deliberately and willfully. Records show that the discovery of the said decision only on March 2003, was to the best of Attorneys Serrano and Samson's personal knowledge and based on authentic records. This accordingly negates any willful and deliberate assertion of a falsehood on their part.

Lastly, even assuming that the claim that Respondents discovered the said decision only on March 2003 is false, the charge against Respondents for perjury may also not prosper.

The Supreme Court already had the occasion to declare the privileged nature of any statement made in an appropriate pleading filed in court. Such statements may not be made the subject of a criminal prosecution. Said the Court in the case of *Flordelis v. Himalaloan, et al.*, 84 SCRA 477:

"Moreover, it is likewise clear that any statement contained in an appropriate pleading filed in court that is relevant to the issues in the case to which it relates is absolutely privileged and it is the law that the same may not be made the subject of a criminal prosecution (*People vs. Aquino*, 18 SCRA 555.)"

In the present case, records establish that the claim made by Attorneys Serrano and Samson, as to the time when they discovered the said decision, was contained within a pleading filed in court. Both parties furthermore did not controvert the relevancy of the said claim to the issues in the case to which it relates. Accordingly, said claim is deemed privileged; hence, not actionable.[14] (Emphasis supplied; underscoring and italics in the original)

By Resolution passed on June 26, 2004, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner and accordingly dismissed the complaint.

Copy of the Notice of Resolution incorporating the IBP Board of Governors' Resolution dismissing the complaint, together with the Investigating Report of Investigating Commissioner Raval, was received by the Office of the Bar Confidant on August 11, 2004.

On September 16, 2004, complainant filed before the Office of the Bar Confidant a Petition for Review of the IBP Board of Governors' Resolution of dismissal of her administrative complaint, faulting the Board of Governors for having gravely erred and committed reversible error

. . . i[n] totally fail[ing] to consider in its Resolution the Motion to Suspend Proceedings/ Archive Case filed by the Respondents, thereby violating the right of the Petitioner to administrative due process.

. . . in not finding the Respondents administratively liable despite their misleading, false and contradictory allegations in the Petition for Annulment and Motion to Suspend Proceedings/ Archive Case.[15]

In the meantime, by Resolution of October 24, 2004, this Court, noting the Notice of Resolution of the IBP dismissing the case for lack of merit, considered the case closed and terminated.

On November 24, 2004, by Resolution of even date, without giving due course to complainant's Petition for Review which was, as stated above, filed on September 16, 2004 before the Office of the Bar Confidant, this Court required respondents to file comment thereon.

To their Comment, respondents attached the Resolution dated January 12, 2004 of the Office of the City Prosecutor of Manila dismissing the criminal case for perjury filed against them by complainant for insufficiency of evidence, thus:

Complainant failed to establish that the respondents made a willful and deliberate assertion of falsehood. While she attached several documents as to the issuance of the subject RTC Decision and other relative documents, complainant failed to adduced (sic) a single evidence showing respondents that they have actual knowledge as to the dates of the RTC Decisions and/ or its date of discovery by the respondents.[16] (Emphasis and underscoring supplied)

The burden of proof in administrative complaints against lawyers rests on the complainant who must establish his charge by clear, convincing and satisfactory proof.[17]

To hold one liable for perjury which is the deliberate making of untruthful statements upon any material matter, before a competent person authorized to administer oath, in cases in which the law requires such oath,[18] Article 183 of the Revised Penal Code[19] requires that the following requisites must concur: (a) the accused made a statement under oath or executed an affidavit upon a material matter; (b) the statement or affidavit was made before a competent officer, authorized to receive and administer oaths; (c) in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and (d) the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.[20] As to the third requisite, good faith or lack of malice is a defense.[21]

This Court finds that complainant failed to prove that respondents deliberately and willfully made the questioned assertion in the verification vis a vis the allegation in paragraph 1.1 of the Petition for Annulment of Judgment. The Sheriff's Report merely shows that copy of the appellate court's decision was received by one Norma Estella. The Motion to Archive/Suspend Proceedings [in the Petition to Annul the RTC decision], which was filed not by respondents but by another counsel, merely shows that copy of the trial court's decision of April 6, 1992 was received by a certain Atty. Quintin Bautista on July 20, 1992. And the records do not show that respondents, who

were not parties to the complaint for specific performance filed by complainant, themselves received a copy of the decision of the RTC or knew about it prior to March 2003.

This Court will not hesitate to mete out proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties, but neither will it hesitate to extend its protective arm to them when the accusation against them is not indubitably proven.[22]

In fine, since complainant failed to discharge the onus of proving her charges against respondents by clear, convincing and satisfactory evidence, her present petition for review of the IBP's dismissal of her complaint must fail.

WHEREFORE, the petition for review is DENIED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 51.

[2] Id. at 10; Respondents' Position Paper, Rollo at 119.

[3] Rollo at 8- 28.

[4] Id. at 8-9.

[5] Id. at 28.

[6] Id. at 29.

[7] Id. at 82-83.

[8] Id. at 115.

[9] Id. at 126.

[10] Id. at 155-160.

[11] Id. at 157.

[12] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

Rule 1.04 – A lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court

processes.

[13] Rollo at 165-169.

[14] Id. at 167-169.

[15] Id. at 176.

[16] Id. at 266.

[17] *Gaviola v. Salcedo*, 428 SCRA 563 (2004); *Alitagtag v. Garcia*, 403 SCRA 335 (2003).

[18] *Padua v. Paz*, 402 SCRA 21, 28 (2003) citing *Burgos v. Aquino*, 249 SCRA 504 (1995).

[19] ART. 183. False testimony in other cases and perjury in solemn affirmation. – The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly make untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned made in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[20] *Acuña v. Deputy Ombudsman for Luzon*, 450 SCRA 232, 243-244 (2005) citing *Saavedra, Jr. v. Department of Justice*, 226 SCRA 438 (1993).

[21] *Acuña v. Deputy Ombudsman for Luzon*, *supra* at 245 citing *People v. Abaya*, 74 Phil. 59 (1942).

[22] *Vide Garrido v. Quisumbing*, 207 SCRA 616 (1992); *Martin v. Felix, Jr.*, 163 SCRA 111 (1988); *Arcadio v. Ylagan*, 143 SCRA 168 (1986).

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