

**FERMINA LEGASPI DAROY, LYDIA LEGASPI AND AGRIPINO LEGASPI,
COMPLAINANTS, VS. ATTORNEY RAMON CHAVES LEGASPI,
RESPONDENT.***A.C. No. 936. July 25, 1975*

Ponente: AQUINO, J.

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Fermina Legaspi-Daroy, Lydia Legaspi-Acha and Agripino Legaspi of Iligan City, in a verified complaint dated March 10, 1970, charged Attorney Ramon Chaves Legaspi of Cagayan de Oro City with malpractice for having misappropriated the sum of four thousand pesos which he had collected for them. They prayed that the respondent be disbarred.[1] (He was 59 years old in 1974. He passed the 1954 bar examinations with a rating of 75.75%).

The evidence shows that the complainants hired the respondent in May, 1962 to represent them in the intestate proceeding for the settlement of the estate of the spouses Aquilino Gonzaga and Paz Velez-Gonzaga. The complainants, together with their brother, Vivencio, who was abroad, were adjudged as one of the six groups of heirs of the late Gonzaga spouses, their deceased mother, Consuelo Gonzaga-Legaspi, being a daughter of the spouses. The heirs in a joint petition dated April 11, 1969, which the respondent signed as counsel for the complainants, agreed that the coconut land left by the decedents would be divided into six equal parts, that the administrator be authorized to sell the said land, and that, after payment of the obligations of the estate, the net proceeds would be distributed among the six groups of heirs. The probate court approved that agreement in its order of April 29, 1969 (Spec. Proc. No. 640 of the Misamis Oriental, CFI, Exh. A).

The land was sold. Fermina Legaspi-Daroy came to know of the sale only when the respondent wrote a note dated November 28, 1969 to her father, Teofilo Legaspi, wherein he stated "That the money we have deposited may be withdrawn on December 8, 1969 at 9:00 o'clock". The respondent advised Teofilo Legaspi to see him on that date so that the money could be withdrawn (Exh. B).

The complainants were not able to get the money on December 8 because the respondent on December 7 sent to Mrs. Daroy a telegram countermanding his prior advice and directing her to go to Cagayan de Oro City on December 10, a Wednesday, to receive the money (Exh. C). On December 9, a certain Atty. Sugamo sent a handwritten note to Mrs. Daroy advising her not to go to Cagayan de Oro City on December 10 because according to the respondent "his postdated checks can be paid and/or collected either Thursday or Friday yet" (Exh. D).

In the afternoon of the same day, December 9, Mrs. Daroy received another note, this time from the respondent himself, "Cousin Ramon". The note contained the disturbing intelligence that Mrs. Daroy's "Cousin Ramon" had withdrawn the money amounting to P4,000 and had spent it. The letter, a sort of extrajudicial confession or mea culpa on respondent's part, reads as follows (Exh. E):

"Dear Fermina,

I wrote this letter with the hope that you will understand me.

I have received P4,000.00 our share in the case filed and is now in my custody.

Previous (sic) I have a case wherein I was forced to use our money to solve my problem.

Now to pay the amount I have used, I sold my jeep to Mr. Ricarte Gorospe, an Employee of the BIR here in Cag. But I am not paid as yet. So, I am waiting as he will pay at 3:00 p.m. today and it's close as I have promised to give it on the 10th, I mean our money.

Kindly help me, defer the giving you of the sum or at least until Thursday or Friday, I bring it to you.

I know my responsibility on this matter.

Thanks.

Cousin

Ramon"

It turned out that on October 20, 1969 the respondent, as "counsel for Fermina Daroy et al.", received from Deputy Provincial Sheriff Jose V. Yasay the said sum of P4,000 as "one (1) share in participation of my clients Fermina Daroy et al. in connection with (the) order of Judge B.K. Gorospe" in the aforementioned intestate proceeding. The respondent signed a receipt for that amount (Exh. L-1). The sheriff paid to Attorneys Angel Quimpo, Leovigildo Tandog, Jr. and Teogenes Velez, Jr. the respective shares of the other groups of heirs also in the sum of P4,000 for each group. Those lawyers turned over the amounts withdrawn to their respective clients (Exh. L).

It is evident that the respondent, in writing on November 28, 1969 to Teofilo Legaspi that the money deposited could be withdrawn on December 8, 1969, acted in bad faith. He had already withdrawn the money before that date. He concealed that fact from the complainants.

Before the disbarment complaint was filed several demands were made upon the respondent to pay to the complainants the amount which he had misappropriated. He repeatedly broke his promises to make payment. As complainants' patience was already exhausted, they filed their complaint for disbarment on March 13, 1970.[2]

Atty. Alfredo R. Busico, the lawyer for the complainants, in a letter to this Court's Clerk of Court dated May 26, 1970, expressed the hope that preferential attention would be given to the case. He said that he had "reliable information from Cagayan de Oro City" that the respondent "has been bragging that nothing will happen to this case" (p. 20, Rollo).

The case was referred to the Solicitor General for investigation, report and recommendation. In 1973 he requested the City Fiscal of Iligan City to conduct the investigation.[3] After the investigation was finished, the case was set for hearing. The respondent did not appear at the hearing.

Respondent Legaspi in his testimony admitted that he received the said sum of P4,000 as shown in the receipt, Exhibit D dated October 20, 1969. He said that after receiving it he immediately wired Teofilo Legaspi at Iligan City to see him (the respondent) in his office at Cagayan de Oro City so that Teofilo Legaspi could tell him "the proper disposal" of that amount.

Teofilo Legaspi supposedly went to see him on October 21, 1969 and at their conference they supposedly agreed that the sum of P700 would be deducted from the P4,000 to cover the expenses which he (Legaspi) described as "expenses involved from the parties litigants, expenses seeking evidence and other expenses relevant to the case" and "major expenses" in the case (sic); that his attorney's fees would be equivalent "to a share of the petitioners", an agreement which was later placed in formal form (referring to the 1968 extrajudicial settlement attached to his

answer); that the balance of P3,300 would be divided into six equal parts (six because of the four Legaspi children the father Teofilo Legaspi and the lawyer Ramon C. Legaspi); that under such division each participant would receive P412 each (P3,300 divided by six gives a quotient of P550 not P412), and that he gave Teofilo the sum of P412. The respondent did not present any receipt to prove that alleged payment.

He said that at first Teofilo Legaspi told him to keep the share of Vivencio Legaspi, who was abroad, but at the end of October or the first week of November, 1969 Teofilo got from him (the respondent) Vivencio's share. Again, the respondent did not ask Teofilo to sign a receipt for Vivencio's share. After paying the shares of Teofilo and Vivencio, the balance of the amount left in respondent's possession amounted to P2,476.

According to respondent's version, the complainants "refused consistently to receive" the said balance from him because they wanted the full amount of P4,000. He said that he had already paid to them the sum of P2,000 and that only the sum of P476 was left in his custody. He did not present any receipt to prove the alleged payment of P2,000. He said that he could deliver that amount of P476 to the complainants.

Mrs. Daroy, in rebuttal, denied that her father, Teofilo Legaspi, received the sum of P412 from the respondent. She said that her father never went to Cagayan de Oro City to confer with the respondent. She said that there was no agreement that the respondent would participate like an heir in the partition of the sum of P4,000. She denied that the respondent offered to pay her and her brother and sister the sum of P2,746. She denied that the respondent paid to the complainants P2,000.

After a careful examination of the evidence, we find that respondent's testimony cannot be given any credence. In his memorandum he stated that after he received from the sheriff "on October 29, 1969" the sum of P4,000, he "immediately wired" his kinsman, Teofilo Legaspi, to come to Cagayan de Oro City and that Teofilo "came on October 21, 1969". Respondent meant October 20, 1969, the date of the receipt, Exhibit L-1.

The truth is that he did not send any such wire. The statement of the sheriff and respondent's office clerk in their affidavits of March 18, 1975 that such a wire was sent is false. What he sent to Teofilo Legaspi was a handwritten note dated November 28, 1969 (Exh. B) wherein the respondent made it appear that the said sum of P4,000 was going to be withdrawn on "December 8, 1969 at nine o'clock". That the respondent in his testimony and memorandum forgot that note, which is Annex C of the complaint for disbarment and which he admitted in paragraph 4 of his answer, is an indication that he does not know the facts of his own case and that he had no scruples in trying to mislead and deceive this Court.

That note of respondent to Teofilo Legaspi, his telegram and his letter (already quoted) to Mrs. Daroy dated December 7 and 9, 1969, respectively (Exh. B, C and E) overwhelmingly belie his fabricated theory that he conferred with Teofilo Legaspi at the end of October or in the first week of November, 1969. He was tempted to concoct a story as to his alleged payments to Teofilo Legaspi because the latter is dead and could not refute him. However, complainants' documentary evidence refutes his prevarications, distortions and fabrications.

He attached to his memorandum (of which he did not furnish complainants a copy) his Exhibit 2, a supposed typewritten computation of complainants claim against him which totalled P10,406.05. Exhibit 2 does not bear any signature. The respondent wants to imply that the complainants were trying to blackmail him. No probative value can be given to Exhibit 2.

The flimsiness and incredible character of respondent's defense are discernible in his Exhibit 1, which he attached to his answer to the original complaint.

Exhibit 1 is a carbon copy of a supposed extrajudicial partition executed in 1968 by four children of Consuelo Gonzaga, by her surviving husband, Teofilo Legaspi and by the respondent, Atty. Legaspi, all the six being

described in the document as "the legitimate children and sole heirs of Consuelo Gonzaga, who died on May 12, 1941". Why the respondent was an heir of Consuelo Gonzaga was not explained.

In that curious instrument, the spaces for the day and month when it was signed and acknowledged before a notary, the spaces for the description of the fourth parcel of land, the spaces for the shares adjudicated to the heirs, the spaces for the instrumental witnesses and the spaces for the numbers of the residence certificates and the dates and places of issue were left blank. Yet the instrument was signed by the above six persons and duly notarized by a notary whose signature is illegible.

In that extrajudicial partition Consuelo Gonzaga was alleged to have left four parcels of land located at Barrio Maputi, Initao, Misamis Oriental which she inherited from her father Aquilino Gonzaga. However, in the order of the Court of First Instance of Misamis Oriental dated April 29, 1969 Consuelo Gonzaga inherited only a one-sixth share in a parcel of land located at Maputi, Initao, Misamis Oriental.

How Vivencio Legaspi, who, according to the instrument, was a resident of Alameda, California, was able to sign it and to appear before a notary was not explained.

The incomplete document, far from being of any help to respondent Legaspi, casts a reflection on his competency and integrity as a lawyer and on the competency and integrity of the notary before whom it was acknowledged. As already noted, it was made to appear herein that respondent Legaspi was an heir of Consuelo Gonzaga when, obviously, he did not possess that status. The document does not even mention whether the deceased died intestate.

That document has no connection with the P4,000 and does not justify the misappropriation or breach of trust committed by the respondent.

A lawyer, under his oath, pledges himself not to delay any man for money or malice and is bound to conduct himself with all good fidelity to his clients. He is obligated to report promptly the money of his clients that has come into his possession. He should not commingle it with his private property or use it for his personal purposes without his client's consent. He should maintain a reputation for honesty and fidelity to private trust (Pars. 11 and 32, Canons of Legal Ethics).

Money collected by a lawyer in pursuance of a judgment in favor of his clients is held in trust and must be immediately turned over to them (*Aya vs. Bigornia*, 57 Phil. 8, 11).

Section 25, Rule 138 of the Rules of Court provides that when an attorney unjustly retains in his hands money of his client after it has been demanded, he may be punished for contempt as an officer of the court who has misbehaved in his official transactions and he is liable to a criminal prosecution.

A lawyer may be disbarred for any deceit, malpractice or other gross misconduct in his office as attorney or for any violation of the lawyer's oath (*Ibid*, sec. 27).

"The relation between an attorney and his client is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring a high degree of fidelity and good faith" (7 Am. Jur. 2d 105). In view of that special relationship, "lawyers are bound to promptly account for money or property received by them on behalf of their clients and failure to do so constitutes professional misconduct. The fact that a lawyer has a lien for fees or money in his hands collected for his clients does not relieve him from the duty of promptly accounting for the funds received." (*Syllabus, In re Bamberger*, 49 Phil. 962).

The conversion of funds entrusted to an attorney is a gross violation of general morality as well as professional ethics. It impairs public confidence in the legal profession. "It deserves severe punishment" (*Sturr vs. State Bar of*

California, 52 Cal. 2d 125, 338 Pac. 2d 897).

A member of the bar who converts the money of his client to his own benefit through false pretenses is guilty of deceit, malpractice and gross misconduct in his office of lawyer. The attorney, who violates his oath of office, betrays the confidence reposed in him by a client and practises deceit cannot be permitted to continue as a law practitioner. Not alone has he degraded himself but as an unfaithful lawyer he has besmirched the fair name of an honorable profession (In re Paraiso, 41 Phil 24, 25; In re David, 84 Phil 627; Manaloto vs. Reyes, Adm. Case No. 503, October 29, 1965, 15 SCRA 131; See Cabigao and Yzquierdo vs. Fernando Rodrigo, 57 Phil. 20).

We find respondent Legaspi guilty of deceit, malpractice and professional misconduct for having misappropriated the funds of his clients. His manufactured defenses, his lack of candor and his repeated failure to appear at the investigation conducted by the City Fiscal of Iligan and at the hearings scheduled by this Court, thus causing this proceeding to drag on for a long time, demonstrate his unworthiness to remain as a member of the noble profession of law. (See Capulong vs. Alino, Adm. Case No. 381, February 10, 1968, 22 SCRA 491).

Taking into account the environmental circumstances of the case, we hold that the proper disciplinary action against the respondent is disbarment. Its salutary purpose is to protect the court and the public from the misconduct of an officer of the court. It is premised on the assumption that a member of the bar should be competent, honorable and reliable, a person in whom courts and clients may repose confidence (In re MacDougall, 3 Phil. 70, 78).

Its objectives are to compel the lawyer to deal fairly and honestly with his client and to remove from the profession a person whose misconduct has proven him unfit for the duties and responsibilities belonging to the office of an attorney (6 Moran's Comments on the Rules of Court, 1970 Ed., p. 242).

The prayer of the complainants that the respondent be ordered to pay them the said amount of P4,000 plus attorney's fees and miscellaneous expenses incurred in the prosecution of this case amounting to more than P1,000 cannot be granted in this disbarment proceeding. That amount should be recovered in an ordinary action.

WHEREFORE, the respondent is disbarred. The Clerk of Court is directed to strike out his name from the Roll of Attorneys.

SO ORDERED

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Antonio, Esguerra, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

[1] On July 3, 1975 Matilde Sacay Isip filed in this Court a complaint for disbarment against the same respondent, Atty. Legaspi, on the ground of malpractice (Administrative Case No. 1490).

[2] In view of respondent's failure to comply with his promise to pay the said sum P4,000 to the complainants, they consulted Attorney Alfredo R. Busico as to what they should do. Following that lawyer's advice, they sent a telegram to the respondent on January 10, 1970, requesting him to pay the P4,000 within a week or they would file civil and administrative actions against him (Exh. F). In reply, the respondent sent a telegram to Mrs. Daroy, promising that he would be able to make payment on or before January 30, 1970 (Exh. G). On January 21, 1970 the complainants sent a wire to the respondent, warning him that if he did not comply with his commitment within the extended period, they would file actions against him without any further notice (Exh. H).

Inasmuch as the respondent had reneged on his promise to pay the P4,000 on or before January 30, Mrs. Daroy, accompanied by Atty. Busico, repaired to Cagayan de Oro City in order to make a personal demand on the

respondent. They were not able to see him in his office. They left his secretary an ultimatum, stating that it would be to respondent's advantage to settle the matter and that, if within a week no such settlement was made, the necessary actions would be filed in the proper tribunals (Exh. I). The respondent requested Atty. Busico as a matter of *companionismo* to give him one week to effect the settlement (Exh. J dated February 14, 1970).

Atty. Busico in a reply-telegram dated February 17, 1970 clarified that the respondent had until February 21 within which to make payment. He asked the respondent to wire how the payment would be made (Exh K). The respondent did not bother to reply.

[3] The Fiscal issued a subpoena to the respondent to attend the hearing scheduled on August 3, 1973. The respondent did not appear. The Fiscal *motu proprio* cancelled the hearing in order to give the respondent a chance to be heard. The case was set for hearing on August 6, 1973 with due notice to the respondent. He did not appear. Mrs. Daroy testified at that hearing. The complainants presented their Exhibits A to L-1.

On January 2, 1974 the Solicitor General filed a complaint for disbarment against respondent Legaspi (See sec. 5, Rule 139, Rules of Court). After the respondent had filed his answer through counsel, which answer is at variance with his answer to the original complaint, the case was again referred to the City Fiscal of Iligan City for the reception of respondent's evidence.

He set the case for hearing on June 25 and July 2, 1974 with due notice to the respondent and his counsel. On those dates the complainants and their counsel appeared but the respondent and his counsel did not appear. The hearing for July 30, 1974 was postponed at respondent's instance. At his request, the case was set for hearing on August 2, 1974. As usual, the respondent and counsel did not appear.

The case was set for hearing on August 27 for the last time. On that date the respondent presented his evidence. He asked for a continuance. The continuation of the hearing was set for August 30. The respondent did not appear. The Fiscal heard complainants' rebuttal evidence.

Respondent's additional evidence was received in this Court only on April 1, 1975. His memorandum was submitted on June, 1975.

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