

ELISEO GUEVARA, COMPLAINANT, VS. MAXIMO CALALANG, RESPONDENT.

Adm. Case No. 681. September 30, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In a complaint for malpractice filed by complainant Eliseo Guevara, the respondent Atty. Maximo Calalang was charged with having acquired by transfer or assignment a parcel of land in violation of Article 1491 of the Civil Code which provides:

"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:

xxx xxx xxx

"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.

"6 . Any others specially disqualified by law."

Respondent Maximo Calalang died on August 8, 1978. His death rendered the case moot and academic. However, the investigation of the charges conducted during the respondent's lifetime indicates that the charges filed against him have no merit. Consequently, We also dismiss the complaint to clear the name of the deceased respondent insofar as this case is concerned.

The report and recommendation of the Solicitor General filed on July 29, 1981 states:

"After a careful consideration of the above-stated facts, as well as of the applicable law, rules and jurisprudence, undersigned are of the opinion that respondent was not guilty of professional misconduct or unethical practice.

"According to respondent, under his agreement with Bernabe Flores, he was to get for attorney's fees one-half (1/2) of what would be awarded to Flores in Civil Case No. Q-2171. Because of the agreement, he actually paid to Flores only one-half of the total consideration of P18 ,348.45 mentioned in the deed of assignment, Exhibit E.

"(Respondent's Memorandum, pp. 3, 4, 9) The other half was set-off with his attorney's fees.

"The agreement of respondent and Bernabe Flores is a contract for contingent fee. It has already been held that contingent fee is not prohibited in the Philippines and is impliedly sanctioned by the Canons of Professional Ethics (Recto vs. Harden, 100 Phil. 427 [1956]. In the absence of a prohibiting statute, a contingent fee agreement between an attorney and his client, under which the attorney is to have a portion of the thing in

litigation in the event of a successful prosecution or defense of an action, is generally recognized as valid (14 Am Jur 2d 41, p. 845), if not attended by fraud, mistake, undue influence, or suppression of facts (7 Am Jur 2d 414, p. 171). The presence of any of the vitiating circumstances has not been shown in this case. Indeed, the absence of fraud or undue influence is indicated by the fact that the complainant in this case is not Flores but one of the third-party claimants to the lot assigned to respondent.

"In some jurisdictions, a contract for contingent fee is even deemed to create a pro tanto equitable assignment, or to transfer an equitable interest in favor of the attorney in the judgment or the proceeds of settlement, or to give him a lien on the judgment or its proceeds (7 Am Jur 2d. 218, p. 173).

"Even if the assignment of rights in question is considered an outright purchase by the respondent of the subject lot or of the rights therein, still respondent was not guilty of breach of professional ethics, misconduct or malpractice by reason of said transaction. It is true that Canon No. 10 of the Canon of Professional Ethics prohibits the lawyer from purchasing any interest in the subject-matter of the litigation which he is conducting, and Article 1491, paragraph 5, of the New Civil Code prohibits him from acquiring by purchase or assignment the property and rights which may be the object of any litigation in which he may take part by virtue of his profession. But in those cases where these provisions were applied, the rights or properties purchased by the lawyer were the very subject of the litigation handled by him (Rubias vs. Batiller, 51 SCRA 120 [1973]; Sotto vs. Samson, 5 SCRA 733 [1962]; Go Beltran vs. Fernandez, 70 Pal. 248 [1940]; In re Ruste, 70 Phil. 243 [1940]; Director of Lands vs. Abagat, et al., 53 Phil. 147 [1929]; Hernandez vs. Villanueva, 70 Phil. 775 [1920], or were properties of the minor in guardianship proceedings in which the lawyer appeared as counsel for the guardian (Junquera vs. Vaño, 72 Phil. 293 [1941], or were properties belonging to the estate for which he appeared as counsel (In re Calderon, 7 Phil. 427 [1907])). In the case at bar, the lot in which respondent acquired rights by assignment was not the subject of Civil Case No. 2171 in which he approved (sic) as counsel for Bernabe Flores and others. The said case was purely one for damages and did not involve the lot in question. The lot was simply levied upon on execution after judgment was rendered in favor of the plaintiffs. Therefore, Article 1491 of the New Civil Code did not apply. Consequently, respondent had not violated the said provision of law."

We agree.

It was not professional misconduct or unethical practice for the respondent to acquire the rights and interests of his client to the 439 square meter parcel of land subject of the administrative charges because the land was not involved in the litigation he was handling. The land was acquired by Bernabe Flores in an execution sale conducted to satisfy the judgment secured in the course of Civil Case No. 2171. The case handled by the respondent was for damages.

WHEREFORE, the complaint against the respondent is dismissed for lack of merit.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Relova, JJ.,concur.

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