

## SECOND DIVISION

[ A.C. No. 4990, September 26, 2001 ]

**ELENA ZARATE-BUSTAMANTE AND LEONORA SAVET  
CATABIAN, COMPLAINANTS, VS. ATTY. FLORENTINO G.  
LIBATIQUE, RESPONDENT.**

### DECISION

**QUISUMBING, J.:**

Before us is a complaint for disbarment filed by Elena Zarate-Bustamante and Leonora Savet-Catabian against Atty. Florentino G. Libatique, received by the Office of the Bar Confidant on December 14, 1998. Complainants allege that respondent, as their counsel, neglected to inform them of the status of a case for partition they had earlier filed, which resulted to the loss of their share in the property subject of partition.

The antecedent facts are as follows:

Elena Zarate-Bustamante, Felicitas Zarate-Savet, and Florencio Zarate were children of Casimiro and Trinidad Zarate.<sup>[1]</sup> The spouses Zarate owned a parcel of land in Bauang, La Union, with an area exceeding 3,000 square meters.<sup>[2]</sup> Casimiro donated the land to Florencio in 1944.<sup>[3]</sup>

In 1974, with respondent as counsel, Bustamante and Savet filed an action seeking partition of the land before Branch 4 of the then Court of First Instance of Bauang, La Union, docketed as Civil Case No. 155-BG. Defendant therein was Florencio Zarate. On October 2, 1975 the CFI ordered the parties to voluntarily partition the property, inasmuch as all three siblings have a right to the land.

Zarate appealed from the decision of the CFI. In a decision promulgated on January 29, 1982, the Court of Appeals reversed the order of the CFI and dismissed the complaint, after it found that the property in question was donated to Zarate by his father in 1944 and that, since then, he had been in actual, adverse possession of the property for almost 30 years when the complaint for partition was filed in 1974. Thus, he had acquired title to the property by prescription.

In 1998, Bustamante secured a copy of the CFI order of partition and inquired from respondent if it could still be enforced. She was also able to secure a copy of an extrajudicial partition of the property made by the heirs of Zarate, who died in 1993, and asked respondent his opinion about such partition.

Respondent replied that the CFI order of partition could still be enforced, and that the extrajudicial partition made by the heirs of Zarate was null and void, being contrary to the CFI order. Respondent agreed to file a new case to enforce the order, for an acceptance fee of P10,000.00 and appearance fee of P500.00.<sup>[4]</sup>

Complainants paid the acceptance fee on September 30, 1998.<sup>[5]</sup> On the same day, respondent, as counsel for Bustamante and Savet's daughter Leonora Savet-Catabian, filed a new case for recovery of ownership, partition, and declaration of nullity of extrajudicial partition.<sup>[6]</sup>

However, the case was dismissed upon motion of the heirs of Zarate, who cited the 1982 ruling of the CA upholding Zarate's ownership of the property, which had become final and executory.<sup>[7]</sup>

Complainants claimed to have been unaware of the appeal made by Zarate to the CA, and confronted respondent about the matter. However, respondent allegedly claimed ignorance of such appeal.<sup>[8]</sup>

Hence, this complaint, in which complainants aver that they lost their share in a property worth millions of pesos due to the gross negligence and irresponsible conduct of respondent. Complainants argue that respondent could not have been unaware of the appeal made by Zarate, since a check of court records allegedly made by them revealed that respondent was duly served court processes in connection with the appeal.

In his Comment, respondent admits that he was counsel for the plaintiffs in the action for partition filed before the CFI of Bauang, La Union. He also admits that he agreed to handle a new case, this time for recovery of ownership and declaration of nullity of an extrajudicial partition, for complainants. Respondent stated that in agreeing to accept the new case, he only relied on the order of the CFI dated October 2, 1975, which he believed could still be enforced. He also believed that the extrajudicial partition made by Zarate's heirs was null and void, owing to the CFI's order of partition.

Respondent likewise admits having received P10,000.00 from complainants as acceptance fee.<sup>[9]</sup> However, he claims to have "no recollection" as to the status of the case filed before the CFI, "as it has been a long time ago and I have no more record of the case on file in my office."<sup>[10]</sup>

We referred the matter to the IBP for investigation, report, and recommendation on June 23, 1999. We received the IBP's report on October 16, 2000.

The IBP found that, indeed, respondent was remiss in fulfilling his duty to his clients. He forgot about the case filed before the CFI, and thus, failed to consider its implication on the new case that he filed in 1998. The IBP recommended that respondent be admonished for filing a new case "when the outcome would have been dependent on an existing appealed case."<sup>[11]</sup> The IBP also recommended that respondent return the P10,000.00 he received from complainants as acceptance fee, with legal interest.

We agree with the findings and the recommendation of the IBP.

Respondent claims to have been rattled and shocked<sup>[12]</sup> upon learning, after he filed the new case in 1998, that the CA reversed in 1982 the order of the CFI directing partition of the property, implying that he was unaware of the appeal made by