

## EN BANC

[ A.C. No. 11483, October 03, 2017 ]

**LUZVIMINDA S. CERILLA, COMPLAINANT, VS. ATTY. SAMUEL SM. LEZAMA, RESPONDENT.**

### RESOLUTION

**PERALTA, J.:**

On November 22, 2010, complainant Luzviminda S. Cerilla filed an administrative complaint<sup>[1]</sup> for gross misconduct against respondent Atty. Samuel SM. Lezama with the Integrated Bar of the Philippines (*IBP*).

In her Complaint, complainant stated that she is one of the co-owners of a parcel of land located at *Barangay* Poblacion, Municipality of Sibulan, Negros Oriental, with an area of 730 square meters. The said property is covered by TCT No. 1-20416 and registered in the name of Fulquerio Gringio. It was later sold by his sole heir, Pancracio A. Gringio, to the heirs of Fabio<sup>[2]</sup> Solmayor, including the herein complainant. Being a co-owner of the subject property, complainant engaged the services of respondent to file an unlawful detainer case against Carmelita S. Garlito with the Municipal Trial Court (*MTC*) of Sibulan, Negros Oriental. At that time, the complainant was working at Camp Aguinaldo, Quezon City, and for this reason, she executed a Special Power of Attorney (*SPA*) in favor of the respondent to perform the following acts, to wit:

- (1) To represent and act on my behalf in filing a case of ejectment against Lita Garlito of Sibulan, Negros Oriental;
- (2) To appear on my behalf during the preliminary conference in Civil Case No. 497-04 and to make stipulations of facts, admissions and other matters for the early resolution of the same including amicable settlement of the case if necessary.<sup>[3]</sup>

Complainant said that on the basis of the SPA, respondent entered into a compromise agreement with the defendant in the unlawful detainer case to sell the subject property of the complainant for P350,000.00 without her consent or a special authority from her. Paragraph 2 of the Compromise Agreement dated January 31, 2005 states:

2. The plaintiff is willing to sell [the] property in question to the defendant in the amount of P350,000.00 within a period of three months beginning February 1, 2005 up to April 30, 2005, the payment of which shall be paid in one setting.<sup>[4]</sup>

The Compromise Agreement was approved by the MTC of Sibulan, Negros Oriental in an Order<sup>[5]</sup> dated January 31, 2005. Subsequently, a Motion for Execution<sup>[6]</sup> dated June 2, 2005 was filed due to complainant's failure to comply with the terms

and conditions set forth in the compromise agreement, as complainant refused to execute a Deed of Sale. The MTC issued a Writ of Execution<sup>[7]</sup> on June 10, 2005.

Complainant contended that respondent misrepresented in paragraph 2 of the Compromise Agreement that she was willing to sell the subject property for P350,000.00. Complainant averred that she did not authorize the respondent to sell the property and she is not willing to sell the property in the amount of P350,000.00, considering that there are other co-owners of the property.

Complainant contended that by entering into the compromise agreement to sell the subject property without any special power to do so, respondent committed gross misconduct in the discharge of his duties to his client. She asserted that respondent's misconduct was the proximate cause of the loss of the subject property in the ejectment case, which prejudiced her and the other co-owners, as respondent knew that the ejectment case was filed by her for the benefit of all the co-owners of the property.

According to complainant, the subject property is located near the Municipal Hall and town plaza of the Municipality of Sibulan, Negros Oriental and the property's market value is not less than P1,500,000.00. Since respondent sold the property for only P350,000.00, she (complainant) and the other co-owners suffer actual loss.

Complainant contended that respondent's act of entering into the compromise agreement with the misrepresentation that she was willing to sell the property in the unlawful detainer case without her consent or conformity, which caused her material damage, warrants respondent's suspension or disbarment.

In his Answer,<sup>[8]</sup> respondent denied complainant's allegation that he misrepresented that complainant was willing to sell the property in the amount of P350,000.00, since he was duly armed with an SPA to enter into a compromise agreement, and the price of P350,000.00 was the actual price paid by the complainant to the owner of the property.

Respondent contended that complainant has no cause of action against him for the following reasons:

- (a) The SPA dated December 27, 2004 was executed by the complainant in favor of the respondent due to her inability to attend every hearing of the unlawful detainer case;
- (b) The SPA contains the sentence under number 2: "including amicable settlement of the case if necessary";
- (c) During the preliminary conference of the unlawful detainer case, the respondent requested Presiding Judge Rafael Cresencio C. Tan, Jr. to allow him to contact the complainant by mobile phone before any compromise agreement could be executed. Respondent tried several times to contact complainant to no avail during the recess. When the case was called again, he requested a resetting, but the Presiding Judge insisted on a compromise agreement to be submitted because respondent was armed with the necessary SPA anyway, and the result was the Compromise Agreement of January 31, 2005;

- (d) Upon the signing of the Compromise Agreement, respondent was able to contact complainant, who objected to the agreement because the amount of P350,000.00 was small;
- (e) After writing a letter of repudiation to the counsel of the defendant in the unlawful detainer case, respondent filed a *Manifestation* dated February 24, 2005 with the MTC of Sibulan, attaching therewith the letter of repudiation, and he also filed a *Motion to Set Aside Order and to Annul Compromise Agreement*<sup>[9]</sup> (on the ground of mistake). However, the MTC denied the said motion in an Order<sup>[10]</sup> dated May 30, 2005. Respondent filed a motion for reconsideration, which was also denied by the MTC;
- (f) In 2006, the heirs of Favio Solmayor filed another unlawful detainer case over the same property with the same MTC against the same defendant, which was dismissed by the court on the ground of *res judicata*;<sup>[11]</sup> and
- (g) In 2008, complainant filed a civil case<sup>[12]</sup> for annulment of judgment/quieting of title, recovery of possession and damages against Carmelita S. Garlito, respondent Atty. Lezama and the MTC of Sibulan, Negros Oriental, and the case is still pending before the Regional Trial Court of Dumaguete City, Branch 35, Negros Oriental.<sup>[13]</sup>

Further, respondent stated that the payment for the property in the amount of P350,000.00 is under the custody of the MTC of Sibulan, although the money was deposited with the Philippine Veterans Bank by defendant Carmelita S. Garlito, who opened an account in respondent's name. Respondent stated that he has never touched the said deposit.

Respondent contended that the SPA given to him by the complainant was sufficient authority to enter into the said compromise agreement. The amount of P350,000.00 was the price of the subject property, because the complainant paid the same amount for the purchase of the property from the Gringio family.

According to the respondent, he entered into the compromise agreement under the honest and sincere belief that it was the fairest and most equitable arrangement. Under the present policy of the Court, parties should endeavor to settle their differences (in civil cases, at least) amicably. To penalize lawyers for their judgment calls in cases where they are armed with authority to settle would wreck havoc on our system of litigation, making them hesitant, apprehensive and wary that their clients might file disciplinary cases against them for the slightest reasons. While the filing of such complaint is part of the professional hazards of lawyering, the same should only be anchored on the most serious misconduct of lawyers, which respondent does not believe is present in this case. Hence, respondent prayed for the dismissal of the complaint.

On June 10, 2011, the IBP Commission on Bar Discipline held a mandatory conference with the parties, who were required to submit their respective Position Papers thereafter.

### **The Commissioner's Report**

On June 28, 2013, Investigating Commissioner Jose I. De La Rama, Jr. submitted his Report,<sup>[14]</sup> finding respondent guilty of violating Canons 15 and 17 of the Code of Professional Responsibility and recommending that respondent be suspended from the practice of law for a period of two (2) years.

The Investigating Commissioner stated that during the mandatory conference, it was agreed upon that the SPA dated December 27, 2004 was the same SPA granted by complainant in favor of respondent. It was also agreed upon that by virtue of the said SPA, respondent entered into a compromise agreement with the defendant in the unlawful detainer case. According to the complainant, while it is true that she executed an SPA in favor of the respondent, there was no specific authority granted to him to sell the subject property for P350,000.00, and that was the reason why she refused to sign the Deed of Sale.

Moreover, respondent admitted during the mandatory conference that complainant did not give him any instruction to sell the property, thus:

Comm. Prior to the execution of the compromise agreement on  
De La January 31, 2005, were you under instruction by Ms.  
Rama : Cerilla to sell the property?  
Atty. No, Your Honor.  
Lezama :

Comm. You were not?  
De La  
Rama :  
Atty. There was none.  
Lezama :

Comm. So what prompted you to [have] that idea that Ms.  
De La Cerilla is willing to sell this property in the amount of  
Rama : Php350,000.00?  
Atty. Because that is the same amount that she paid [for] the  
Lezama : property. It is an amicable settlement in meeting  
halfway.

Comm. But you at that time, prior to the signing of the  
De La Compromise Agreement, you do not have any  
Rama : instruction from Ms. Cerilla to sell the property?  
Atty. No, Your Honor.  
Lezama :

Comm. So it was your own volition?  
De La  
Rama :  
Atty. Yes, my own belief.<sup>[15]</sup>  
Lezama :

The Investigating Commissioner stated that respondent must have overlooked the fact that the subject property was co-owned by complainant's siblings. Respondent knew about the co-ownership because of the existence of the Extrajudicial Settlement of Estate,<sup>[16]</sup> but he did not assert that his authority to compromise

binds only the complainant. Respondent merely made a flimsy excuse as shown in the transcript of stenographic notes, to wit:

Comm. Are you aware, Atty. Lezama, that the property does  
De Lanot belong exclusively to Ms. Cerilla?

Rama :

Atty. *I was of the impression that it was owned by*

Lezama : *complainant* that's why the ejectment complaint filed speaks only of Luzviminda Cerilla but that was her claim because she said she paid for it. [17]

The Investigating Commissioner stated that the transcript of stenographic notes shows that respondent admitted that complainant did not grant him the authority to sell the property in the amount of P350,000.00. Thus, knowing that he did not possess such authority, respondent cannot validly claim that his client, complainant herein, was willing to sell the property in the amount of 350,000.00.

In order to save himself, respondent allegedly filed a *Manifestation*, but he failed to submit a copy of the same before the Commission.

Further, the transcript of stenographic notes taken during the preliminary conference of the unlawful detainer case shows that it was the respondent who stated that the plaintiff (complainant herein) was willing to sell the property, and it was also the respondent who fixed the selling price of the property at 350,000.00, thus:

Court : The plaintiff is willing to sell the property?

Atty. Yes, if the defendant is willing to pay the amount of sale.

Lezama

:

Court : How much?

Atty. P100,000.00, although the record is more than that, your  
Lezama Honor.

:

Court : They will also want to buy the property. You will sell it for  
P100,000.00?

Atty. I don't think, your Honor. Maybe it's P300,000.00.

Lezama

:

Court : P300,000.00. How much?

Atty. P350,000.00.

Lezama

:

X X X.

[18]

The MTC Judge also inquired about respondent's authority, and respondent replied, thus:

Court : Are you authorize[d] to make some suggestions to other  
matter, dismissal or other settlement? Do you have an  
authority?