

EN BANC

[A.C. No. 10662 [Formerly CBD Case No. 10-2654], July 07, 2015]

JUN B. LUNA, COMPLAINANT, VS. ATTY. DWIGHT M. GALARRITA, RESPONDENT.

DECISION

LEONEN, J.:

Before us is a disbarment Complaint against Atty. Dwight M. Galarrita for his failure to deliver to his client, complainant Jun B. Luna, the P100,000.00 settlement proceeds he received after entering into a Compromise Agreement in the foreclosure case without his client's consent.

On April 7, 2010, Jun B. Luna (Luna) filed an Affidavit-Complaint^[1] against his lawyer, Atty. Dwight M. Galarrita (Atty. Galarrita), before the Integrated Bar of the Philippines.

Luna alleged that he retained Atty. Galarrita's legal services in filing a foreclosure Complaint^[2] on October 14, 2002 before the Regional Trial Court of Gumaca, Quezon.^[3] The Complaint against one Jose Calvario (Calvario) alleged that Calvario borrowed P100,000.00 from Luna. This loan was secured by a Deed of Real Estate Mortgage^[4] over a parcel of land in Quezon Province.^[5] Due to non-payment of the loan, Luna filed the Complaint praying for payment of the obligation with interest, and issuance of a foreclosure decree upon Calvario's failure to fully pay within the period.^[6]

The parties tried to amicably settle the case during pre-trial, followed by Luna's presentation and offer of evidence.^[7]

Atty. Galarrita opted to enter into a settlement with the other party after his formal offer of evidence.^[8] They submitted the *Kasunduan*^[9] (Compromise Agreement) before the trial court on February 14, 2006.^[10] It provided that Calvario would pay Luna P105,000.00 as payment for his mortgaged land and, in turn, Luna would cause the removal of the encumbrance annotation on the land title.^[11] The trial court approved^[12] the Compromise Agreement in its February 20, 2006 Decision.^[13]

Luna alleged that Atty. Galarrita never informed him of this Compromise Agreement, and did not deliver to him the P100,000.00 settlement proceeds Atty. Galarrita had received.^[14]

Luna's Complaint attached a copy of the Counsel's Report^[15] dated August 12, 2003

where Atty. Galarrita proposed and provided justifications for settlement, and waived any compensation for his services in the case:^[16]

Please take note that Mr. Jose Calvario is willing, able and ready to pay you **IN CASH** the full amount of One Hundred Ten Thousand Pesos **(Php110,000.00)**, no more no less. While we are aware that it's your desire to fight this case to its ultimate legal conclusion, allow us nonetheless, to present the pros and cons of having this case be amicably settled.

Point One: He has in his possession the original copy of the checks you issued showing that upon signing of the **Contract Of Real Estate Mortgage**, he received from you Eighty Eight Thousand Pesos **(Php88,000.00)** only. Meaning, he has already paid in advance his interest of 12% or the equivalent of Twelve Thousand Pesos **(Php12,000.00)** when the contract was signed. Consequently, it is useless for us to argue before the court that his principal indebtedness amounted to One Hundred Thousand Pesos **(Php100,000.00)**. Hence, if you accept the compromise settlement of One Hundred Ten Thousand Pesos **(Php110,000.00)**, you stand to gain Twenty Two Thousand Pesos **(Php22,000.00)**.

. . . .

Rest assured, your undersigned counsel leaves it to your better judgment as to whether he deserves to be paid for his legal services regarding this case against Mr. Jose Calvario.

Repeat, I will no longer ask from you any compensation for my services regarding this case.^[17] (Emphasis in the original)

Atty. Galarrita wrote Luna the following: Counsel's Reports, Requests for Funding, and Statements of Accounts in relation to case developments, retainer's fees, and reimbursement for expenses incurred.^[18]

After learning of the settlement, Luna wrote Atty. Galarrita: "I was so surprised when you went into plea agreement for Compromise Agreement without my knowledge [a]nd beyond to [sic] what we had discussed."^[19] Atty. Galarrita replied through the Letter^[20] dated January 27, 2006, stating in part:

I entered into an amicable settlement with Mr. Jose Calvario because I am certain that in this kind of case, a compromise is better than WINNING it.

Everything is transparent. You even told me that you are not interested to acquire the land that's why you signaled your approval of a compromise.

I was hoping that you already understood my situation. As I have told you, I can't waste my time going to Gumaca every now and then. Traveling time is too precious for my cases here in Metro Manila.

The point is: I did not receive any appearance fee for the numerous hearings conducted there despite sending several statements of accounts (SOA) to your office.

If that's the case, why prolong the agony?

Why bother after all to pursue this case when indeed, you are not interested to acquire the land and you are not bent in spending the right remuneration for your undersigned counsel?

I have nothing to hide. The money will be deposited in my savings account because I just could not handle that amount of cash in my pocket.^[21]

In his Letter^[22] dated February 27, 2006, Luna wrote:

Yes I'm not interested with that lot in Quezon, [and this is] the reason why I'm the one who propose to them [that] [w]e settle this case on our own without any lawyer, they are the one[s] who insist to go to Court. . . . This is what we come out to [p]ropose to them, with the right amount to cover all those only been spent including Acceptance fee. You even waive[d] your fee on this, for every hearing which I couldn't understand, [y]et we end up that we still going [sic] to pursue this case, it was discussed during my trip there. [This is] [t]he reason I'm too surprised with your plea Agreement without my knowledge.^[23]

Luna mentioned that the delay in retainer's fee payments was due to Atty. Galarrita's negligence in handling the case.^[24]

In his Letter^[25] of the same date, Atty. Galarrita explained: "The reason this case was archived [was] because I could not attend several hearings for lack of meal and transport allowance going to Gumaca, Quezon. . . . that's moot and academic because this case was not dismissed by the court, at all."^[26] Atty. Galarrita then stated that "[f]or all my shortcomings as a lawyer, I now ask forgiveness. . . . But let it not be said that I betrayed you and your cases."^[27]

In August 2009, Luna received a letter from one of the heirs of Jose Calvario, Emma C. Tayag, seeking delivery of the land title since they paid the P100,000.00 settlement amount.^[28] Another heir, Lutchiare Calvario, wrote Luna in September 2009 again demanding delivery of title.^[29]

Luna alleged in his Affidavit-Complaint that Atty. Galarrita has not remitted the P100,000.00 to date.^[30] He prays for Atty. Galarrita's disbarment.^[31]

In his Verified Answer,^[32] Atty. Galarrita prays for the dismissal of the disbarment Complaint.^[33] He argues that he entered the Compromise Agreement by virtue of a Special Power of Attorney^[34] that includes this purpose.^[35] He regularly submitted reports to Luna on developments and possible settlement before he entered the Compromise Agreement.^[36] He submits that Luna "'slept' on his rights."^[37]

Atty. Galarrita adds that under their General Retainership Agreement,^[38] Luna shall pay him P4,000.00 monthly.^[39] Luna should have paid P48,000.00 as of November 17, 2006, and after four years with no revocation, termination, or nullification, Luna's unpaid obligation amounted to P208,000.00.^[40] He listed other unpaid amounts for his legal services.^[41] Atty. Galairrita, thus, argues for an application of the rule on retaining lien.^[42]

Atty. Galarrita also raises the two-year prescription under Rule VIII, Section 1 of the Rules of Procedure of the Integrated Bar of the Philippines Commission on Bar Discipline.^[43] More than four years elapsed since their last communication in 2006 when the Compromise Agreement became final.^[44]

In his December 4, 2010 Report and Recommendation,^[45] the Integrated Bar of the Philippines Investigating Commissioner^[46] found that Atty. Galarrita violated Rule 16.03 of the Code of Professional Responsibility and recommended "his suspension from the practice of law for a period of one (1) year[.]"^[47]

The Integrated Bar of the Philippines Board of Governors, in its April 15, 2013 Resolution No. XX-2013-441,^[48] adopted and approved with modification the Investigating Commissioner's Report and Recommendation in that Atty. Galarrita is recommended to be "suspended from the practice of law for six (6) months and [o]rdered to [r]eturn the amount of One Hundred Thousand (P100,000.00) Pesos to complainant without prejudice to the filing of a collection case for retainer's fee against complainant."^[49] The Board of Governors denied reconsideration in its May 3, 2014 Resolution No. XXI-2014-270.^[50]

The Office of the Bar Confidant reported that "no motion for reconsideration or petition for review was filed as of November 17, 2014."^[51] In any case, it is this court that has the authority to discipline members of the bar.^[52]

The issue for resolution is whether respondent Atty. Galarrita should be held administratively liable for entering into a Compromise Agreement without his client complainant Luna's consent, then refusing to turn over the settlement proceeds received.

This court acknowledges the recommendation of the Integrated Bar of the Philippines Board of Governors, with modification increasing the period of suspension from the practice of law to two (2) years.

I

Those in the legal profession must always conduct themselves with honesty and integrity in all their dealings.^[53]

Lawyers should maintain, at all times, "a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code [of Professional Responsibility]."^[54]

Members of the bar took their oath to conduct themselves "according to the best of [their] knowledge and discretion with all good fidelity as well to the courts as to [their] clients[,]"^[55] and to "delay no man for money or malice[.]"^[56]

These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship.^[57] Clients entrust their causes—life, liberty, and property—to their lawyers, certain that this confidence would not be abused.

Complainant Luna entrusted respondent Atty. Galarrita with handling the civil case involving a mortgaged land in Quezon Province. However, without complainant Luna's consent, respondent Atty. Galarrita settled this case with the other party.

Article 1878 of the Civil Code provides that "[s]pecial powers of attorney are necessary in the following cases: . . . (3) *To compromise*, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired[.]"

The Rules of Court thus requires lawyers to secure special authority from their clients when entering into a compromise agreement that dispenses with litigation:

SEC. 23. *Authority of attorneys to bind clients.* - Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing and in taking appeals, and in all matters of ordinary judicial procedure. ***But they cannot, without special authority, compromise their client's litigation,*** or receive anything in discharge of a client's claim but the full amount in cash.^[58] (Emphasis supplied)

Atty. Galarrita contends that he holds a Special Power of Attorney to enter into compromise agreements, but as found by the Investigating Commissioner:

There seems to be a compelling reason to believe that Complainant had not given any authority for the Complainant [sic] to enter into Compromise Agreement at that precise stage of the trial. Firstly, the Complainant was not made a party to the Compromise Agreement despite the fact that he was not abroad when the agreement was executed. Secondly, there was no indication that he had agreed to the amount of P100,000.00 in exchange for his withdrawal of the complaint. Thirdly, he was not seasonably informed of the execution of the Compromise Agreement/payment of the P100,000.00 and came to know of the same only much later.

Respondent argued that Complainant had previously executed a Special Power of Attorney wherein he authorized the former to "*enter into possible amicable settlement or submit any matter to arbitration and alternative modes of dispute resolution, simplification of the issues, the necessity of amendment to the pleadings, the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof the limitation of the number of witnesses, the advisability of preliminary reference of issues to a commissioner, the propriety of rendering judgment on the pleadings, or summary judgment,*