

SECOND DIVISION

[A.C. NO. 6504, August 09, 2005]

GEORGE C. SOLATAN, COMPLAINANT, VS. ATTYS. OSCAR A. INOCENTES AND JOSE C. CAMANO, RESPONDENTS.

DECISION

TINGA, J.:

The present case focuses on a critical aspect of the lawyer-client relationship-the duty of loyalty. The fidelity lawyers owe their clients is traditionally characterized as "undivided." This means that lawyers must represent their clients and serve their needs without interference or impairment from any conflicting interest.

This administrative case traces its roots from the manner by which Attys. Jose C. Camano and Oscar A. Inocentes responded to the efforts of complainant, George C. Solatan, to lease a certain Quezon City apartment belonging to the attorneys' clients. On the basis of acts branded by the Integrated Bar of the Philippines (IBP) as "bordering on technical extortion," accepting funds and giving unsolicited advice to an adverse party, and casting doubts as to the procedure of levy, the IBP resolved^[1] to recommend the suspension of Atty. Camano from the practice of law for one (1) year. It likewise recommended the reprimand of Atty. Inocentes, whom it held liable for the aforementioned acts of his associate, under the principle of command responsibility.

Only Atty. Inocentes has elected to contest the resolution of the IBP, as he questions the propriety of his being held administratively liable for acts done by Atty. Camano.^[2] However, the recommendation to suspend Atty. Camano shall also be passed upon by virtue of Section 12, Rule 139-B of the Rules of Court.^[3]

Attys. Inocentes and Camano were both engaged in the practice of law under the firm name of *Oscar Inocentes and Associates Law Office*. Atty. Inocentes held office in his home located at No. 19 Marunong St., Central District, Quezon City, while Atty. Camano was stationed at an "extension office" of the firm located in 3rd/F, 956 Aurora Blvd., Quirino Dist., Quezon City.

The *Oscar Inocentes and Associates Law Office* was retained by spouses Andres and Ludivina Genito (spouses Genito), owners of an apartment complex (the Genito Apartments) located at 259 Tandang Sora cor. Visayas Avenue, Quezon City, when the Genito Apartments were placed under sequestration by the Presidential Commission on Good Government (PCGG) on 9 July 1986.^[4] The law office represented the spouses Genito before the PCGG and the Sandiganbayan, and subsequently, with authority from the PCGG.^[5] in ejectment cases against non-paying tenants occupying the Genito Apartments.^[6]

Complainant's sister, Gliceria Solatan, was a tenant in Door 10, Phase B of the Genito Apartments. It appears from the records that Gliceria Solatan left for the United States in 1986, and since then, the apartment was either intermittently used by members of her family or placed under the charge of caretakers.^[7] In August 1987, a complaint for ejectment for non-payment of rentals was filed against Gliceria Solatan.^[8] On 3 March 1988, in a judgment by default, a *Decision*^[9] was rendered ordering Gliceria Solatan to vacate the premises of the apartment, pay the spouses Genito the amount of Thirty Thousand Six Hundred Pesos (P30,600.00) as unpaid rentals from February 1986 to July 1987 with interest at 24% per annum from 20 August 1987 until the premises are vacated, Ten Thousand Pesos (P10,000.00) as attorney's fees, and costs of the suit.^[10]

Complainant was occupying the subject apartment when he learned of the judgment rendered against his sister. On 10 May 1988, prior to the implementation of a writ to execute the judgment, complainant and his mother, Elvira Solatan, approached Atty. Inocentes at his home office. Complainant informed Atty. Inocentes of his desire to arrange the execution of a lease contract by virtue of which complainant would be the new lessee of the apartment and thus make possible his continued stay therein. Atty. Inocentes referred complainant and his mother to his associate, Atty. Camano, the attorney in charge of the ejectment cases against tenants of the Genito apartments. After the exchange, complainant went to Atty. Camano at the satellite office of Atty. Inocentes's firm. From here on out, events quickly turned sour. Different versions of subsequent events were presented. The facts reproduced hereunder are by and large culled from the findings of the IBP Investigating Commissioner, Siegfried B. Mison.

During the meeting with Atty. Camano, a verbal agreement was made in which complainant and his mother agreed to pay the entire judgment debt of Gliceria Solatan, including fifty percent of the awarded attorney's fees and One Thousand Six Hundred Pesos (P1,600.00) as costs of suit provided that Atty. Camano would allow complainant's continued stay at Door 10, Phase B of the Genito Apartments. As partial compliance with the agreement, complainant issued in the name Atty. Camano a check for Five Thousand Pesos (P5,000.00) representing half of the P10,000.00 attorney's fees adjudged against complainant's sister.

Complainant and his mother failed to make any other payment. Thus, the sheriff in coordination with Atty. Camano and some policemen, enforced the writ of execution on 22 June 1988 and levied the properties found in the subject apartment. An attempt at renegotiation took place at the insistence of complainant, resulting in Atty. Camano's acquiescence to release the levied properties and allowing complainant to remain at the apartment, subject to the latter's payment of costs incurred in enforcing the writ of execution and issuance of postdated checks representing installment rental payments. Complainant, thus, issued four (4) checks drawn on Far East Bank and Trust Company dated the fifteenth (15th) of July, August, September, and October 1988 each in the amount of Three Thousand Four Hundred Pesos (P3,400.00).^[11] Half of the amount represented complainant's monthly rental, while the other half, a monthly installment for the payment of Gliceria Solatan's judgment debt.

On 28 June 1988, acting on the advice of Atty. Camano, complainant presented an Affidavit of Ownership to the sheriff who then released the levied items to

complainant. However, a *Northern Hill* 3-burner gas stove was not returned to complainant. The stove was in fact kept by Atty. Camano in the unit of the Genito Apartments wherein he temporarily stayed^[12] and, thereafter, turned over the same to a certain Recto Esberto, caretaker of the Genito Apartments.^[13]

On 1 August 1988, complainant filed the instant administrative case for disbarment against Atty. Inocentes and Atty. Camano.^[14] After formal investigation, and despite conflicting testimonies on the tenor and content of agreements and conversations, several disturbing facts were revealed to have been uncontroverted-Atty. Camano's acceptance from complainant of attorney's fees and the costs of implementing the writ of execution, possession of complainant's levied *Northern Hill* oven, and advice to complainant on how to recover the latter's levied items. Thus, IBP Investigating Commissioner Siegfred B. Mison, made the following recommendations, viz:

Based on the facts revealed in their respective Memoranda, the penalty of six (6) months suspension is therefore recommended to be imposed on Respondent Camano for committing the following acts that adversely reflects (sic) on his moral fitness to continue to practice law[:]

1. He received money (P5,000 then P1,000) from the adverse party purportedly for attorneys fees and for reimbursement of sheriff's expenses. Such act of **accepting funds from the adverse party in the process of implementing a writ, borders on technical extortion particularly in light of the factual circumstances as discussed.**
2. He gave unsolicited advice to the adverse party in suggesting the filing of an Affidavit of Ownership over the levied properties, a **suggestion evidently in conflict with [the interest of] his own client, supposedly, the Genitos.**
3. He **failed to turn over the gas stove to either party thereby casting doubt as to the procedure of the levy.**

Based on the facts revealed, the penalty of Reprimand is therefore recommended to be imposed on Respondent Inocentes for committing the following acts that adversely reflects (sic) in his fitness to continue to practice law[:]

1. He **allowed Camano to perform all the aforementioned acts, either by negligence or inadvertence** which are inimical to the legal profession. He cannot claim ignorance or feign innocence in this particular transaction considering that the Complainants themselves went to his office on different occasions regarding this transaction. Ultimately, **he exercised command responsibility over the case and had supervisory control over Respondent Camano inasmuch as he received periodic reports either by phone or in person from the latter.**
2. The letter disclaimer executed by Mr. Genito filed by Respondent Inocentes does not mitigate any liability whatsoever since the wrongdoing done against the profession cannot be undone by a mere letter from a third party.^[15] (Emphasis supplied.)

The IBP Board of Governors approved the aforementioned recommendation, with the modification of an increase in Atty. Camano's period of suspension from six (6) months to one (1) year, in a resolution stating, viz:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the of the Investigating Commissioner-finding the recommendation fully supported by the evidence on record and the applicable laws and rules, with modification, and for accepting funds from adverse party in the process of implementing a writ borders on technical extortion, for giving unsolicited advice to the adverse party a suggestion evidently in conflict with [the interest of] his own client and for casting doubts to the procedure of the levy, Atty. Jose C. Camano is hereby SUSPENDED from the practice of law for one (1) year, likewise, Atty. Oscar Inocentes is hereby REPRIMANDED for he exercised command responsibility over the case inasmuch as he received periodic reports either by phone or in person.

[16]

The IBP held that Atty. Camano's act of giving unsolicited advice to complainant is a culpable act because the advice conflicted with the interest of his clients, the spouses Genito. The rule on conflicting interests, established in Rule 15.03 of the Code of Professional Responsibility, deals with conflicts in the interests of an attorney's actual clients among themselves, of existing and prospective clients, and of the attorney and his clients. It states that a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The relation of attorney and client begins from the time an attorney is retained.^[17] An attorney has no power to act as counsel or legal representative for a person without being retained.^[18] To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession.^[19] At the time the questioned statement was made, Atty. Camano had called the police to restrain complainant from surreptitiously pulling out the levied properties from the apartment complex by virtue of which the latter was brought to the police station for questioning. The statement was made in response to complainant's insistence at the police station that the levied properties were owned by him and not by the judgment debtor.^[20] No employment relation was offered or accepted in the instant case.

More fitting, albeit, to the mind of this Court, inapplicable to the case, is Canon 15 of the same Code which encompasses the aforementioned rule. In general terms, Canon 15 requires lawyers to observe loyalty in all dealings and transactions with their clients.^[21] Unquestionably, an attorney giving legal advice to a party with an interest conflicting with that of his client resulting in detriment to the latter may be held guilty of disloyalty. However, far be it that every utterance of an attorney which may have afforded an individual some relief adverse to the former's client may be labeled as a culpable act of disloyalty. As in every case, the acts alleged to be culpable must be assessed in light of the surrounding circumstances.

While the levy was made on chattel found in the apartment of the judgment debtor, Gliceria Solatan, the complainant was the true owner of the properties.