

EN BANC

[A.C. No. 5830 (formerly CBD No. 810), January 26, 2004]

MARY D. MALECDAN, COMPLAINANT, VS. ATTY. PERCIVAL L. PEKAS AND ATTY. MATTHEW P. KOLLIN, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

The instant case arose when Mary D. Malecdan filed a verified Letter-Complaint dated January 19, 2001 addressed to Atty. Ceasar G. Oracion, then President of the Integrated Bar of the Philippines (IBP), Baguio and Benguet Chapters, charging Atty. Percival L. Pekas and Atty. Matthew P. Kollin, with violation of the lawyer's oath, as they "committed acts not only prejudicial to [the IBP] but are in themselves in violation of the oath that they have sworn to uphold as [a] condition for their admission to the bar."^[1]

The undisputed facts as culled from the records are as follows:

On November 25, 1999, the complainant entered into a deed of sale with the Spouses Washington and Eliza Fanged over a parcel of land located in Baguio City, covered by Transfer Certificate of Title No. T-71030.^[2] The complainant paid P10,000 as earnest money, and P2,600,000 as the full and final payment of the consideration of the sale. The money was received by Eliza Fanged and deposited in the account of Atty. Artemio Bustamante, then counsel for the latter. The complainant later found out, however, that the said lot was the subject of a controversy^[3] between the former owners and the Fanged Spouses.

When Atty. Bustamante refused to release the proceeds of the sale to Eliza Fanged, the latter, through her new counsel respondent Atty. Kollin, filed a complaint for rescission of contract with prayer for the issuance of a temporary restraining order with damages^[4] against the complainant, Atty. Bustamante, Philippine Commercial and Industrial Bank (PCIB) and Washington Fanged on December 2, 1999.^[5]

Eliza Fanged and the respondents thereafter caused the filing of a Manifestation of Compromise Settlement with Motion dated December 14, 1999.^[6] It was prayed, among others, that an order be issued directing defendant PCIB to transfer the amount of P30,000 from the account of Atty. Bustamante to a joint account in the name of respondents Atty. Kollin and Atty. Pekas by way of attorney's fees. The complainant was not a signatory to the compromise settlement, as she was in the United States at the time. The money was then transferred to the respective accounts as prayed for in the compromise settlement.

The Complainant's Allegations

According to the complainant, respondent Atty. Kollin knew very well that the money entrusted to him did not belong to his client, Eliza Fanged. Yet, when the complainant's duly authorized representative Wilfreda Colorado requested that the money be released to her, Atty. Kollin refused to do so, on the pretext that there was no written authorization from the latter. The respondent, however, admitted that the money was in his possession.^[7] The complainant further averred that:

11. The said lawyers were aware that the money in the bank which was the subject of Civil Case No. 4580-R was the consideration for a supposed sale between me and Eliza Fanged which did not materialize because it could not be registered aside from the fact that it is void pursuant to the decision in Civil Case No. 4528-R. They knew that the money is not owned by Eliza Fanged. Yet, despite this knowledge, they misled the court by making it appear that all the parties agreed to the settlement by filing the manifestation of compromise settlement with motion (Annex "G") knowing that I was abroad and could not have given my consent thereto.
12. Worse, they made it appear that I was copy furnished of the pleading when in truth and in fact I never received the same as I was in the United States of America. My investigation of the matter reveals that the sister of Eliza Fanged, Veronica Baking, received the pleading for me.
13. When confronted, Eliza Fanged admitted to me that the money was actually entrusted to respondent Atty. Matthew Kollin.^[8]

The complainant also alleged that she filed the complaint against the respondents because of the latter's connivance in causing the withdrawal of the money in the bank. She pointed out that while the manifestation of compromise settlement does not bear the signature of Atty. Kollin, paragraph (b) of the prayer clearly shows that the amount of P30,000 was appropriated to a joint account belonging to the respondents by way of attorney's fees.

The complainant explained that respondent Atty. Kollin, as counsel for Eliza Fanged in Civil Case No. 4580-R, prayed that the sale of the property to her (the complainant) be declared null and void. Proceeding from this premise, then, Eliza Fanged had no right to the money in the bank; the respondents, likewise, had no right to withdraw the amount of P30,000 to answer for their attorney's fees. She further averred that the respondents made it appear to the trial court that she (the complainant) was duly notified of the purported settlement, when she was, in fact, not a party thereto as evidenced by the records. Thus:

...[T]he records reveal that the person who received the copy of the document purporting to cover the settlement intended for me is the very sister of his client, Eliza Fanged, in the person of Veronica Baking. Veronica Baking is not and was never a resident of Dagsian, Baguio City, the location of my permanent residence. Eliza Fanged could not have thought of this scheme. ...

9. But lawyer as he is, Atty. Kollin must have anticipated possible legal repercussion[s] that would ensue as a result of this scheme. In the Manifestation of Compromise Settlement with Motion, he asked his co-respondent, Atty. Pekas, to sign as counsel for Eliza Fanged. Atty. Pekas seem[ed] to be too willing to extend assistance to Eliza Fanged if only to get the money from the bank. However, in the actual release, and the partition of the money, the respondents reportedly actively participated to insure their share of P30,000.00 as attorney's fees. Atty. Pekas did not stop there. As counsel for Eliza Fanged, he signed the Notice of Dismissal dated December 16, 1999 with a misleading statement that "the parties have extrajudicially settled this case amicably among themselves", when in truth and in fact, I was never consulted. ...^[9]

The Respondent's Allegations

The respondents denied the foregoing allegations in their respective answers.

Respondent Atty. Kollin admitted that he knew that the money in the bank was the complainant's payment for the land purchased from the Fanged Spouses. He pointed out, however, that it was unfair to state that his client Eliza Fanged was not entitled thereto, since in the first place, she appeared as the vendor in the deed of sale executed between her and the complainant. Furthermore, although Civil Case No. 4528-R had already been decided by the trial court, the same was appealed to the Court of Appeals,^[10] and did not become final and executory as erroneously stated by the complainant. Atty. Kollin also pointed out that he was not the original counsel of the Spouses Fanged in the said case, but merely "inherited" the same from Atty. Artemio Bustamante.^[11]

The respondent further averred that because Atty. Bustamante and the Fangeds failed to settle the problem, he filed a complaint for the rescission of the sale, and not for the release of the money in Atty. Bustamante's possession. According to the respondent:

To me, this is the gist of the problem. Complainant Mary Malecdan strongly believes that she was swindled because of the said decision. However, the only problem between Dato and Fanged is the determination of the actual balance and the payment thereof. Settle the balance with Mrs. Dato and everything would be settled likewise. As of this time, it is very safe to say that the issue is still "SUB JUDICE" and complainant could not even be sure of the outcome of said case, although there is a pending proposal for the eventual settlement of the case by the payment of the unpaid balance.

Moreover, the title of the subject land is in the possession of the Complainant and could transfer said title in her name anytime. Perhaps, what the complainant is saying is that the title could be transferred in her name, however, a "notice of lis pendens" was annotated therein due to the filing of the case between O. Dato and the spouses Fanged.

For all intents and purposes, complainant could transfer the title in her name and take possession of the property although the "notice of lis

pendens" will be transferred or be likewise annotated in her title. Complainant knows very well that the problem between O. Dato and Eliza Fanged is the actual balance to be paid as per the first deed of sale; ...
[12]

Respondent Atty. Pekas, for his part, admitted that the amount of P30,000 was transferred by Atty. Bustamante to their account, but averred that it was done voluntarily. He denied the allegation that they misled the court by making it appear that the parties agreed to the compromise settlement with motion, since, as can be gleaned from the compromise agreement itself, the complainant was not a party thereto.^[13] The respondent further alleged that:

20. As best as the respondent can recall, on the late afternoon of December 12, 1999, Atty. Matthew Kollin called up respondent on the telephone. He was requesting for respondent to attend a hearing of his case the following day, December 13, 1999, for the issuance of a temporary restraining order. This was on the pretext that he has another out of town case on the same date and cannot attend the hearing. As it is a common practice among lawyers, respondent acceded to the request;

21. As agreed by the respondent and Atty. Matthew Kollin, respondent shall enter a special appearance for that hearing only. Respondent shall not argue on the matter but shall only manifest submission of the matter for resolution;

...

27. That after Eliza Fanged and Wilfreda Colorado related the foregoing story, respondent asked about the settlement being proposed by the Honorable Court. Eliza Fanged then expressed her willingness to accept the counter-offer of Atty. Artemio Bustamante to settle the case in the amount of Two Million;

28. With the new development, respondent contacted the office of Atty. Matthew Kollin to refer the matter but was informed that the latter is still out of town. Respondent then advised that if Eliza Fanged is willing, he can assist her in the settlement, to which advice Eliza Fanged acceded;

29. Respondent contacted Atty. Artemio Bustamante who likewise was willing to settle and the details of the settlement were agreed upon. After which the proper manifestation and motion was submitted to the Honorable Court for consideration and ultimately dismissal of the case;

31. That during the whole time that respondent participated in the resolution of the case, he never committed any act involving deceit and machination. He acted in a way which he thinks is proper ...^[14]

Respondent Atty. Pekas prayed that the case be dismissed for lack of merit, averring that as a new and young lawyer, there was no reason for him to risk his future for a measly sum, through dishonest conduct.^[15]

The Proceedings Before the Integrated Bar of the Philippines (IBP).
Commission on Bar Discipline

On May 7, 2002, Commissioner Milagros V. San Juan issued the following Order:

When this case was called for hearing, Atty. Percival Pekas appeared. Atty. Matthew P. Kollin failed to appear despite the notice duly served on him.

Complainant Mary D. Malecdan appeared without counsel. She manifested that she is submitting her case for resolution based on the pleadings on record.

The complainant was ordered to present certified true copies of Annex "A" attached to her complaint, the Agreement of Purchase and Sale and the Deed of Absolute Sale, Annex "B" of her complaint in favor of Mary Malecdan and the Decision Annex "D." Complainant is given ten (10) days from today to present true copies of her documentary evidence.

Atty. Percival Pekas is given ten (10) days from today to file his rejoinder. Atty. Pekas likewise manifested that after he shall have filed his rejoinder he submits this case for resolution.^[16]

In his Rejoinder, respondent Atty. Pekas reiterated that he acted in good faith, and did not commit any act of deceit or machination. He also averred that Atty. Artemio Bustamante would have been a great help in determining the truth, but unfortunately, the complainant chose not to implead him.^[17]

On August 3, 2002, the IBP Board of Governors passed Resolution No. XV-2002-395, finding respondent Atty. Kollin guilty of dishonesty to the court, while dismissing the complaint as to respondent Atty. Pekas, thus:

*RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A;" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Atty. Matthew P. Kollin's dishonesty to the court with resulting damage and prejudice to the complainant, Respondent Atty. Kollin's (sic) is hereby **SUSPENDED** from the practice of law for three (3) years. The complaint against Atty. Pekas is **DISMISSED** for there is no evidence on record to prove that he was aware of the defect in Eliza Fange[d]'s right to claim the sales proceeds with a **WARNING** that Atty. Pekas should be more circumspect with respect to taking over other lawyers' cases and handling sensitive matters such as the compromise settlement in Civil Case No. 4580-R.*

According to IBP Commissioner Milagros V. San Juan's Report dated May 30, 2002, the main issue to be resolved in the case was factual in nature: whether or not the respondents knowingly caused the withdrawal from the bank of the purchase price of the lot in question, despite their knowledge of a defect in their client's right to claim the said amount. The Commission found that respondent Atty. Kollin knew