

THIRD DIVISION

[A.C. No. 3037, May 20, 2004]

TRIFONIA J. GAVIOLA, COMPLAINANT, VS. ATTY. ERASTO D. SALCEDO, RESPONDENT.

R E S O L U T I O N

CORONA, J.:

This is a complaint for disbarment filed by Trifonia J. Gaviola against respondent Atty. Erasto D. Salcedo for gross misconduct and deceit.

In her complaint, Gaviola alleged that respondent was one of the partners of the law firm which assisted her when a controversy arose between her and Mindanao School of Arts and Trades (MSAT), now Don Mariano Marcos Memorial Polytechnic State College (DMMMPSC), in connection with her possession of a 21,163 square meter lot (Lot No. 3715 B-1) located at Lapasan, Cagayan de Oro City.

For legal services rendered, complainant conveyed portions of Lot No. 3715 B-1 to the partners of the firm, as follows: 4,000 square meters to Atty. Abeto Salcedo, 3,000 square meters to Atty. Emilie Salcedo-Babarin and 2,000 square meters to respondent Atty. Erasto Salcedo.

After Atty. Abeto Salcedo's death on October 14, 1985, respondent allegedly started harassing and intimidating complainant, asking for an additional portion of Lot 3715 B-1. He supposedly claimed that he was unfairly treated for having been paid less than what Atty. Abeto Salcedo and Atty. Emilie Salcedo-Babarin got.

Complainant further alleged that respondent instigated, for a consideration, one Bernarda Sabanal to file a case against her and provoked some 50 squatters to forcibly enter and settle on her property on the pretext that it was public land open to any occupant. Hence, this complaint against respondent.

Respondent vehemently denied all the charges against him. He alleged that this was not a conflict between him and complainant but between him and his niece, Atty. Emilie Salcedo- Babarin, who allegedly maneuvered complainant into filing this case against him because of professional jealousy and a family feud.

In a resolution dated February 27, 1991, the Court referred the case to the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Meanwhile, on August 15, 1993, before the case could be heard by the IBP, complainant and respondent filed their joint motion to dismiss, with complainant's verified affidavit of desistance attached, stating that the case had long been settled and that the criminal case against respondent for violation of PD 772 (Anti-squatting

Law) had also been dismissed by the fiscal's office way back in 1986. Both parties apologized to the Court for failing to immediately notify it of the settlement.

On June 19, 1999, the IBP Board of Governors passed Resolution No. XIII-99-166 adopting and approving the report and recommendation of Investigating Commissioner Lydia A. Navarro who recommended the dismissal of the said case:

After going over the records of this case, the undersigned noted that on August 12, 1993 the parties filed a Joint Motion to Dismiss stating therein that the case had long been settled in 1986 when they have already reconciled and the complaint arose from a land dispute which did not involve dishonesty and moral turpitude.

The parties attached to their Joint Motion to Dismiss a duly verified Affidavit of Desistance executed by the complainant Trifonia Gaviola to the effect that she is no longer interested in pursuing the case she filed against the respondent which was merely due to an outburst of emotion caused by intrigues and petty bickerings which was ironed out during their family meeting being family friends. It was only unfortunate that they failed to notify the Supreme Court in 1986 of an Affidavit of Desistance executed then for the criminal and administrative case No. 3037 and she was not coerced into executing this Affidavit of Desistance.

Likewise Atty. Arturo C. Ubaub issued a certification on August 12, 1993 that the IBP Misamis Oriental Chapter has not received any administrative complaint against IBP member, Atty. Erasto D. Salcedo since they assumed Office as its officers since 1993.

After going over the records of this case and considering the lapse of time since the parties decided to bury their hatchets, the undersigned has no alternative but to respectfully recommend in the spirit of human compassion to dismiss the case with prejudice.

The recommendation is hereby approved.

Complainant, instead of proving her affirmative allegations, executed an affidavit of desistance stating that she was no longer interested in pushing through with her complaint against respondent and that the same was merely due to an outburst of emotion, intrigue and petty bickering. She stated that she had already settled her differences with respondent.

The Court has held in a number of instances that the filing of an affidavit of desistance by the complainant for lack of interest does not *ipso facto* result in the termination of an administrative case for suspension or disbarment of an erring lawyer.^[1] However, it is also well-settled that, in disbarment proceedings, the burden of proof rests on the complainant. In *Martin vs. Felix*,^[2] we held:

Significantly, this Court has, time and again, declared a conservative and cautious approach to disbarment proceedings like the instant case.

Thus, in *Santos vs. Dichoso* (Adm. Case No. 1825; 84 SCRA 622) and