

SECOND DIVISION

[A.C. No. 4650, August 14, 2003]

ROSALINA BIASCAN, COMPLAINANT, VS. ATTY. MARCIAL F. LOPEZ, RESPONDENT.

R E S O L U T I O N

QUISUMBING, J.:

This administrative case stems from a verified complaint^[1] for disbarment, filed on October 4, 1996, by complainant Rosalina Biascan against respondent Atty. Marcial F. Lopez for alleged fraud or misrepresentation, breach of his duty as an officer of the court, and betrayal of his oath as a lawyer amounting to gross misconduct, which renders him unfit to continue in the practice of law.

Subject of the complaint is a 600-square meter lot located between Constanca and Miguelin Streets in Sampaloc, Manila. Said property was originally covered by Transfer Certificate of Title (TCT) No. 34127 in the name of Florencio Biascan. The latter died intestate, leaving behind two parcels namely: the lot in Sampaloc, Manila, and another parcel in Novaliches, Quezon City, covered by TCT No. 87068.

In her complaint, Rosalina Biascan avers that she is the court-appointed administratrix of the estate of her deceased father, Florencio Biascan. That estate is the subject of Special Proceedings No. 98037 entitled "*In the Matter of the Intestate Estate of the Deceased Timotea Zulueta and Florencio Biascan*," pending before the Regional Trial Court (RTC) of Manila, Branch 4. Pursuant to her appointment, she filed her Inventory and Appraisal^[2] Report sometime in November 1975.

In August 1977, respondent entered his appearance in the intestate proceedings as counsel for an oppositor, Maria Manuel Biascan (now deceased).^[3]

In an Order^[4] dated April 2, 1981, the RTC declared complainant and her brother, German Biascan, heirs of the late Florencio. Maria Manuel Biascan then filed a Motion for Reconsideration^[5] on June 6, 1981, but the trial court denied said motion on April 30, 1985.^[6] Meanwhile, in complete disregard of the intestate proceedings and without knowledge and approval of the lower court or complainant and her brother, Maria Manuel Biascan executed an Affidavit of Self-Adjudication^[7] on June 20, 1983 where she falsely represented herself as the sole heir of the late Florencio Biascan. On July 12, 1983, she then presented the Affidavit of Self-Adjudication to the Register of Deeds of Manila, as a result of which TCT No. 34127 was cancelled and TCT No. 155384 issued in her name.

Complainant further averred that on July 24, 1990, without the approval of the intestate court and taking advantage of the aforementioned fraud, respondent Lopez registered with the Register of Deeds a Deed of Assignment,^[8] dated December 22,

1977, which Maria Manuel Biascan had executed in his favor. In that deed, Maria Manuel Biascan ceded to respondent 210 square meters of the 600-square meter land now covered by TCT No. 155384. Thereafter, the Register of Deeds of Manila issued TCT No. 193790 covering the ceded 210 square meters in respondent's name.^[9]

On June 15, 1992, respondent sold the 210-square meter lot covered by TCT No. 193790 to the Spouses Danilo and Corazon Arganoza in whose favor TCT No. 208601 was issued.^[10]

According to complainant, all the foregoing transfers occurred while Special Proceedings No. 98037 was still pending, but she discovered the transfers only in February 1993 after inquiries on her behalf were made with the Registries of Deeds of Manila and Caloocan. ^[11] Suits for the recovery of the properties are pending with the Regional Trial Courts of Manila and Caloocan.^[12]

In his Comment/Answer^[13] filed on November 17, 1998, respondent Lopez denies committing any fraud, misconduct, or breach of duty to the court, and asserts he acted in good faith. According to him, what complainant Rosalina Biascan reported in her Inventory and Appraisal report was a parcel of land covered by TCT No. 24127 and not the Sampaloc property covered by TCT No. 34127. Also, his acquisition of subject property and the resulting issuance of TCT No. 193790 in his name was valid because the land was payment for his legal services under a valid contingent fee contract. Respondent claims that Maria Manuel Biascan offered to pay him 35% of the area of TCT No. 155384 for his legal services. Since there was no notice of *lis pendens* on TCT No. 155384, he accepted the offer and the Deed of Assignment was executed between them.^[14]

Respondent further asserts that complainant is guilty of laches, as she failed to act swiftly to protect her alleged interest over the subject property. He points out that from June 2, 1975, the date complainant filed the petition for settlement and administration of the intestate estate of Florencio Biascan, up to May 28, 1983 or for approximately eight (8) years, complainant failed to assert her rights as owner of the property by either registering a claim to the subject property or filing a case for recovery thereof.

Finally, respondent prayed for the suspension of the instant administrative case on the ground that the recovery suits pending before the RTCs of Manila and Caloocan raise issues that must first be resolved before the instant complaint can proceed; otherwise, there might be conflicting findings between said lower courts and this Court.

In our Resolution^[15] of March 1, 1999, we referred the instant complaint to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

On August 3, 2002, the IBP Board of Governors passed Resolution No. XV-2002-394, the full text of which reads as follows:

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 that it has been established that respondent committed acts of misconduct which have caused damage and prejudice to complainant and her brother, respondent is hereby SUSPENDED

from the practice of law for three (3) years.^[16]

This Resolution is now before this Court for confirmation.

At the outset, we note that there appears to be some confusion between the parties on whether the original TCT covering the property in question was TCT No. 24127 or TCT No. 34127. Resort to the records show, however, that both parties are in fact referring to the lot located between Constanacia and Miguelin Streets in Sampaloc, Manila.

On the issue of respondent's liability, this Court agrees with the findings of the IBP Board of Governors.

It is clear from the records that when respondent entered his appearance in Special Proceedings No. 98037 as counsel for Maria Manuel Biascan in August 1977, complainant had already filed her Inventory and Appraisal Report dated November 22, 1975, which listed the realty covered by TCT No. 34127, as one of the properties forming part of the Estate of Florencio Biascan. As counsel for an oppositor, respondent must have gone over the records of Special Proceedings No. 98037, which included the aforesaid Inventory and Appraisal Report. Also, the Deed of Assignment itself stated that TCT No. 34127 was registered in Florencio Biascan's name and was the subject of Special Proceedings No. 98037. Clearly therefore, when Maria Manuel Biascan executed the Deed of Assignment in December 22, 1977 to cover respondent's contingent fees, respondent had actual knowledge that the lot subject of said deed formed part of the estate of Florencio Biascan. Notwithstanding this and the fact that Special Proceedings No. 98037 was still pending,^[17] respondent registered the Deed of Assignment in his favor on July 24, 1990 and caused the transfer of title over the part of the land Maria Manuel Biascan assigned to him. In so doing, the respondent transgressed Article 1491^[18] of the Civil Code expressly prohibiting a lawyer from acquiring property or rights that may be the object of any litigation in which they may take part by virtue of their profession.

Respondent's assertion that the assignment was made pursuant to a contingent fee contract will not exonerate him. True, a contract for a contingent fee is generally not covered by Article 1491 and is valid because the transfer or assignment of the property in litigation takes effect only after the finality of a favorable judgment.^[19] However, as aforesaid respondent caused the transfer of the subject property in his name *during the pendency* of Special Proceedings No. 98037. Thus, the prohibition in Article 1491 clearly applies. ^[20] Respondent is, therefore, liable for malpractice.^[21]

As a member of the bar, respondent is strictly mandated to comply with the Attorney's Oath as well as the Code of Professional Responsibility, ^[22] both of which require him to obey the laws as well as the legal orders of duly constituted