



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 16, 2023** which reads as follows:*

“A.C. No. 8831 (*Pacific Plans Inc. (now Abundance Providers and Entrepreneurs Corporation) v. Atty. Evillo C. Pormento*).—This resolves the Verified Complaint¹ filed by complainant Pacific Plans Inc., now Abundance Providers and Entrepreneurs Corporation, against respondent Atty. Evillo C. Pormento for including non-clients in his prayer for charging or attorney’s lien, in alleged violation of the Code of Professional Responsibility² (CPR).

Antecedents

This administrative case stemmed from the rehabilitation proceedings before the Regional Trial Court (RTC) of Makati, Branch 61, entitled “*In The Matter Of The Petition For Corporate Rehabilitation With Prayer For Suspension of Payments,*” docketed as SP Proc. No. M-6059. Complainant is the corporation subject of the rehabilitation while respondent is the counsel of one of the oppositors, the Parents Enabling Parents Coalition (PEP Coalition). The PEP Coalition is composed of at least 600 plan holders out of the total 34,000 education plan holders of complainant.³

During the pendency of the rehabilitation case, the RTC approved a rehabilitation plan wherein complainant’s 34,000 plan holders will be paid monetary settlements.⁴ While the payment and distribution of settlements were ongoing, respondent filed a Manifestation and Motion for Charging or Attorney’s Lien,⁵ where he prayed for the automatic and immediate withholding and deposit of a 5% fee of the amount paid or to be paid to the plan holders of complainant, **whether they are members of the PEP**

¹ *Rollo*, pp. 1-19.

² Issued: June 21, 1988.

³ Records, Vol. 2, pp. 52-53. See also *rollo*, pp. 234-235.

⁴ *Id.* at 54.

⁵ *Rollo*, pp. 58-60.

Coalition or not, viz.:

WHEREFORE, foregoing considerations, it is most respectfully prayed of this Honorable Court that PACIFIC PLANS INC. thru Mr. Mamerto Marcelo Jr. or his authorized representative and any person acting for and in his behalf be ordered to automatically and immediately withhold the sum of 5% as herein counsel's contingent fee from whatever amount that had already been paid or shall be paid to the plan holders of PACIFIC PLANS, INC. who are members and non-members of PEPPI. It is likewise prayed that Mr. Marcelo, Jr. and its authorized representative or any person acting for and in his behalf be ordered that the said sum of 5% shall be deposited to the Honorable Clerk of this Court.

MOST RESPECTFULLY SUBMITTED.⁶ (Underscoring supplied)

The motion was granted by the trial court,⁷ which issued a Writ of Execution⁸ for the withholding of the 5% fee, amounting to USD 1,955,251.60.⁹ However, the order granting the motion was reversed and set aside by the Court of Appeals (CA) in its February 17, 2011 Decision,¹⁰ where it ruled that respondent cannot charge the non-members of the PEP Coalition because his contract for legal services is with the PEP Coalition only.¹¹ The Decision was affirmed by this Court.¹²

In its Position Paper,¹³ complainant argued that respondent engaged in unethical conduct when he filed the Manifestation and Motion for Charging or Attorney's Lien despite the absence of any factual or legal basis to claim the amount of USD 1,955,251.60 as attorney's fees; that respondent made an erroneous claim that the lien is immediately executory; that respondent is not entitled to the amount since he rendered minimal legal services only; that there is no final judgment in the rehabilitation case yet that would allow the settlement of attorney's fees; that the unethical conduct displayed by respondent caused grave injury to complainant; and that contrary to

⁶ Id. at 59.

⁷ Id. at 83-90. Penned by Presiding Judge J. Cedrick O. Ruiz.

⁸ Id. at 151-152.

⁹ Id.

¹⁰ Id. at 221-244. Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Francisco P. Acosta.

¹¹ Id. at 234-236.

¹² See records, Vol. 2, pp. 38-39, where respondent stated:

In fact, in the case of *ATTY. EVILLO C. PORMENTO VERSUS PACIFIC PLANS, INCORPORATED (now ABUNDANCE PROVIDERS AND ENTREPRENEURS CORPORATION), G.R. NO. 199147 (C.A.G.R. SP NO.116760)* [sic], the Honorable Supreme Court in its January 16, 2012 Resolution denied with finality the Motion for Reconsideration filed by [the] undersigned respondent and it affirmed the decision of [the] Court of Appeals Former Special Eight (8) [sic] Division in CA-G.R.SP No. 116760 granting the petition of PPI (now APEC) for Certiorari with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction seeking to set aside the twin Resolutions of RTC Branch 61 of Makati City granting the Manifestation and Motion for Charging or Attorney's Lien by the undersigned respondent and the Issuance of the Writ of Execution.

¹³ Id. at 52-94.

respondent's malicious imputations, complainant did not engage in any malevolent scheme to prosecute the PEP Coalition.¹⁴

Respondent, on the other hand, argued in his Verified Position Paper¹⁵ that he honestly believed that the motion had factual and legal basis, as he was at the forefront of relentlessly and tirelessly fighting for the cause of complainant's plan holders; that as a result of these efforts, 13 counts of libel were filed by the controlling stakeholders of complainant to silence him and his group; that respondent can charge attorney's fees even against non-clients on the principles of *quantum meruit* and unjust enrichment; that complainant did not suffer injury since the fee will be taken from the funds of the plan holders and not from the corporate funds of complainant; that even if respondent handled the case for more than just a year, he still tirelessly fought for the rights of the disgruntled plan holders; and that the instant petition for disbarment is intended to purely harass him, as shown by the number of complaints filed against him by complainant and its stakeholders.¹⁶

Report and Recommendation of the Integrated Bar of the Philippines

In a Report and Recommendation,¹⁷ the Investigating Commissioner found respondent to have engaged in unethical conduct and therefore recommended his reprimand, *viz.*:

WHEREFORE, premises considered, it is respectfully recommended that Respondent Atty. Evillo C. Pormento be reprimanded.

RESPECTFULLY SUBMITTED.¹⁸

The Investigating Commissioner found that respondent could not legally charge non-clients with attorney's fees because there was no contract between them, and that *quantum meruit* does not apply since the non-clients were not informed about the charging lien and hence could not have assented to it.¹⁹

The Board of Governors of the Integrated Bar of the Philippines (IBP) adopted the foregoing findings, *viz.*:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon the Respondent the penalty of

¹⁴ Id. at 60-90.

¹⁵ Id. at 30-47.

¹⁶ Id. at 36-45.

¹⁷ Temporary *rollo*, unpaginated. Penned by Commissioner Sherwin C. De Joya.

¹⁸ Id., unpaginated.

¹⁹ Id., unpaginated.

REPRIMAND.²⁰

Hence, the Court's action.

Issue

Did respondent engage in unethical conduct in filing the Manifestation and Motion for Charging or Attorney's Lien?

Our Ruling

We sustain the recommendation of the IBP.

Preliminarily, the Court notes that the issues of whether the Manifestation and Motion for Charging Lien or Attorney's Lien has merit, and whether the subsequent Writ of Execution was properly issued, had already been fully resolved by the appellate court. In reversing the RTC, the CA held that respondent cannot charge the non-members of the PEP Coalition because his contract for legal services is with the PEP Coalition only, *viz.*:

While it may be true that a lawyer may enter into a written contract for services which shall control the amount to be paid therefor, it is undisputed, however, that the contract of legal services was entered into by and between PEPCI and private respondent only, a matter which was even admitted by private respondent himself. Public respondent's assailed Resolutions, on the other hand, required petitioner PPI to withhold five percent (5%) from the entire entitlements of ALL planholders without regard whether these planholders are clients of private respondent or not. This, notwithstanding the fact that the records do not disclose whether all members of PEPCI executed separate special powers of attorney authorizing PEPCI to represent them in all cases, or, to engage the services of a lawyer, in particular, private respondent's services, to protect their interests. At most, the special powers of attorney executed by several of PEPCI's members represent not even a third of its alleged three thousand (3,000) members, or, as claimed by petitioner PPI and which was not controverted by private respondent, just around six hundred five (605) signatures at best.

In a similar case where a counsel sought to enforce his agreement with his clients who are employees of MWSS, the Supreme Court held that considering the records only disclose that only five hundred twenty-two (522) out of more than seven thousand (7,000) employees signed such agreement, and other MWSS employees signed similar contracts or arrangements with their own respective agents/lawyers, which are similarly recognized as valid and binding, the lower court and Court of Appeals both erred in ruling that all employees of MWSS are liable to pay attorney's fees and/or litigation expenses to said counsel. The Supreme Court ratiocinated that **only parties to a contract are bound by its terms**, thus –

²⁰ Id., unpaginated. Signed by National Secretary Patricia-Ann T. Prodigalidad.

It is basic that only parties to a contract are bound by its terms. **This is based on the principle of relativity of contracts which provides that contracts take effect only between the parties, their assigns and heirs.** It cannot favor or prejudice third persons. **Applying this principle, only private respondents are bound by the terms of their agreement with respondent Bautista.** Those who have signed similar contracts with their own agents/lawyers are bound by their own contracts. *Res inter alios acta nocere non debet* – a third party may not be prejudiced by the act, declaration or omission of another.

As correctly argued by petitioner PPI, to approve the withholding of five percent (5%) contingent fee from all plan holders without distinction as to whether ALL plan holders are private respondent's client, and without regard to some plan holders who have engaged the services of their own lawyers, or have entered into similar agreements with their own counsels, constitutes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent.²¹ (Underscoring supplied)

The appellate court also rejected respondent's argument on *quantum meruit* and unjust enrichment, noting that a lawyer may not be allowed to recover more than what is reasonable and without the consent of the non-clients, to wit:

Quantum meruit simply means "as much as he [or she] deserves," however, in no case must a lawyer be allowed to recover more than what is reasonable pursuant to Section 24, Rule 138 of the Rules of Court. And it is true that "[o]bligations do not emanate only from contracts. One of the sources of extra-contractual obligations found in our Civil Code is the quasi-contract premised on the Roman maxim, that *nemo cum alterius detrimento locupletari protest*. As embodied in our law, certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another. This is the pronouncement of the Supreme Court in the case of *Traders Royal Bank Employees Union-Independent vs. NLRC*, wherein it ruled that a quasi-contract between the parties in the case at bar arose from the lawyer's lawful, voluntary and unilateral prosecution of petitioner's cause without awaiting the latter's consent and approval. However, it bears stressing that this ruling of the Supreme Court took into consideration the fact that [the] lawyer was already retained by the clients, and the attorney's fees due to the counsel was for an additional remuneration for his efforts to prosecute a case not included in the retainer agreement. This is hardly the factual milieu in the present case before Us.

In the said case of *Traders*, the Supreme Court stated that it is not unaware of the old ruling that **a person who had no knowledge of, nor consented to, or protested against the lawyer's representation may not be held liable for attorney's fees even though he [or she] benefited from the lawyer's services.** But [it] is mentioned that this doctrine may not be applied in the case of *Traders* simply because the clients did not object to private

²¹ *Rollo*, pp. 234-236.



respondent's appearance before the NLRC to prosecute their claim.

It is in the same vein that We cannot accept private respondent's theory of *nemo cum alterius detriment locupletari protest* considering that in the present case, the alleged clients of private respondent, save for PEPCL, was not informed that a Manifestation and Motion for Attorney's Lien was filed before the court a quo. The rest of the thirty-four thousand (34,000) planholders were not furnished a copy of the said Manifestation. There was therefore, no opportunity for them to give their assent to, or their objection to the said Manifestation.²² (Underscoring supplied)

As manifested by respondent himself, the foregoing Decision had been affirmed by this Court and his Motion for Reconsideration denied with finality.²³ Hence, the Court need no longer determine if the motion and its subsequent execution have merit. Likewise, the issue on the reasonability of the amount of charging lien need no longer be resolved considering that the motion praying for it was eventually reversed.

Accordingly, the only issue left for this Court to consider is whether respondent's attempt to charge a lien against the payments due to non-clients is unethical and violative of the CPR.

Upon review, the Court is convinced that respondent's conduct transgressed the limits of propriety. In including non-clients in his prayer for charging or attorney's lien, he failed to properly exercise his discretion and thus failed to uphold the dignity of the legal profession.

Canon 7 of the CPR states that "[a] lawyer shall at all times uphold the integrity and dignity of the legal profession x x x." In *Ko v. Maduramente*,²⁴ the Court elucidated on what upholding the integrity and dignity of the legal profession means, *viz.*:

Time and again, the Court has emphasized that being a lawyer is a privilege burdened with conditions. As a member of the bar, he/she must maintain the integrity and dignity of the legal profession by refraining from committing acts which might diminish in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. He/she is thus expected to preserve the trust and confidence reposed upon him/her by his/her clients, his/her profession, the courts and the public. He/she must also retain a high sense of morality, and fair dealing to continue his/her membership in good standing. Otherwise, a lawyer may be "disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity."²⁵ (Citations omitted)

Here, respondent gave the illusion that lawyers can simply charge

²² Id. at 237-239.

²³ Records, Vol. 2, pp. 38-39.

²⁴ A.C. No. 11118, July 14, 2020.

²⁵ Id.

whomever they want to charge, whether they be clients or not, and whether they have prior notice or without. Essentially, he sought to be compensated by plan holders who have not engaged his services or who have retained other lawyers to fight for their cause. To this Court, respondent's conduct opened the possibility of the public lessening its degree of confidence in the legal profession.

We do not agree with complainant, however, that respondent deserves to be disbarred for his action. Under Section 27, Rule 138 of the Rules of Court, disbarment or suspension is proper for serious offenses such as deceit, malpractice, or other gross misconduct, among others—none of which are present here—*viz.*:

Section 27. Disbarment and suspension of attorneys by the Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his [or her] office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his [or her] conviction for a crime involving moral turpitude, or for any violation of the oath which he [or she] is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers constitute malpractice.

Further, it has been held that the power to disbar must be exercised with great caution.²⁶ It may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the Bar, to wit:

The object of a disbarment proceeding is not so much to punish the individual attorney himself [or herself], as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar. **Thus, the power to disbar attorneys ought always to be exercised with great caution, and only in clear cases of misconduct which seriously affects the standing and character of the lawyer as an officer of the court and member of the bar.** (Emphasis supplied, citations omitted)

Here, it is important to note that the order granting the Manifestation and Motion for Charging or Attorney's Lien was eventually reversed by the appellate court, preventing any real material damage to both non-clients and complainant alike. Accordingly, the Court agrees with the IBP that the commensurate penalty is a reprimand, with a stern warning that a repetition of

²⁶ *Duque Jr. v. Brillantes, Jr.*, 795 Phil. 638, 646-647 (2016), citing *Anacta v. Resurreccion*, 692 Phil. 488, 497 (2012).

the same or any similar act will be dealt with more severely. This should deter similar conduct in the future.

In fine, respondent is reprimanded for failing to properly exercise his discretion in including non-clients in his prayer for charging or attorney's lien. He is reminded that being a lawyer is a privilege burdened with conditions, among which is to maintain the integrity and dignity of the legal profession. When lawyers act in a manner that diminishes the confidence of the public in the fidelity, honesty, and integrity of the profession, they may be imposed administrative penalties, the severity of which depends on the exercise of sound judicial discretion.²⁷

WHEREFORE, this Court resolves to **ADOPT** and **APPROVE** the recommendation of the Integrated Bar of the Philippines' Board of Governors in its May 19, 2018 Notice of Resolution in CBD Case No. 12-3384. Accordingly, respondent **ATTY. EVILLO C. PORMENTO** is **REPRIMANDED** for his violation of the Code of Professional Responsibility, with a **STERN WARNING** that a repetition of the same or any similar act will be dealt with more severely."

SO ORDERED." *Inting, J., designated additional Member per Raffle dated December 7, 2022 vice Zalameda, J., who recused due to prior participation in the Court of Appeals.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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JAN 27 2023

²⁷ See *Portuguese, Jr. v. Centro*, A.C. No. 12875, January 26, 2021. (Citations omitted).

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