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[Adm. Case No. 1222. February 27, 1976]

SECOND DIVISION

DAVID T. GADIT, complainant, *vs.* ATTYS. JOSE C. FELICIANO, SR., JEROME V. PARAS & DONATO M. GUEVARA, respondents.

ADMINISTRATIVE CASE against a members of the Bar.

SYNOPSIS

Complainant sought to disbar Attys. Jose C. Feliciano, Sr. and Jerome V. Paras, and Judge Donato M. Guevara for alleged deceitful and irregular actuations in connection with an ejectment case, alleging that complainant was not served with summons as respondents Feliciano and Paras gave the wrong address in the complaint; that the complaint for ejectment was not verified and in spite of said defect, Judge Guevara gave due course thereto; and that respondent Paras had taken ₱600 cash from complainant's drawer in the course of execution of the judgment. The Supreme Court dismissed the case as recommended by the Solicitor General. No *prima facie* case having been shown against Judge Guevara, the Supreme Court found no need to refer the case for investigation by any other official.

SYLLABUS
of the Ruling of the Court

1. LEGAL ETHICS; ALLEGED DECEITFUL ACT NOT PROVEN.– Where it was shown that the address of defendant in an ejectment case indicated in the complaint was 2248-A San Anton, Sampaloc, instead of 2248 in the same street, and

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service of summons and decision was in fact made in the place of the residence of the defendant to persons not denied to be living with him, it is clear from the evidence that there was no improper, much less deceitful actuation on the part of respondents.

2. PLEADING AND PRACTICE; VERIFICATION OF COMPLAINT IN EJECTMENT; EFFECT OF NON-COMPLIANCE.– Where a complaint for ejectment was not verified in violation of Section 1 of Rule 70, but it does not appear that defendant was substantially prejudiced thereby, the facts alleged in the complaint having been duly proven at the trial *ex parte* after the defendant was declared in default and it is not claimed that those facts are materially false, such defect was merely formal – it did not affect the validity and efficiency of the pleading, much less the jurisdiction of the court. Counsel is however reminded to be more careful in the preparation of his pleading.
3. ID.; ID.; ID.; QUESTION OF LACK OF VERIFICATION SHOULD NOT BE RAISED FOR THE FIRST TIME ON APPEAL.– The objection as to non-compliance with the requirement of Section 1, Rule 70 should be raised in the proceeding itself, not in the appellate court or in an administrative complaint for the first time.

APPEARANCES OF COUNSEL

David T. Gadit on his own behalf as complainant.

Jerome V. Paras on his own behalf & for respondent Jose C. Feliciano, Sr.

RESOLUTION

BARREDO, *J.*:

Complaint for disbarment against respondents Attys. Jose C. Feliciano, Sr., Jerome V. Paras and Donato M.

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Guevara for alleged deceitful and irregular actuations in connection with an ejectment case filed by respondent Paras in behalf of his co-respondent Feliciano with the other respondent Hon. Donato Guevara, judge of the City Court of Manila.

The complaint is a sequel of a judgment by default rendered by Judge Guevara against complainant ordering him to vacate the premises of respondent Feliciano. Allegedly, complainant was not served with summons because respondents Feliciano and Paras gave the wrong address in the complaint. It is also charged that the complaint for ejectment filed by respondent Paras was not verified, and in spite of said defect, Judge Guevara gave due course thereto. Thirdly, it is claimed that respondent Paras had taken ₱600 cash from the drawer of complainant in the course of or during the execution of the judgment complained of. Respondents denied all the charges in their answer.

The report, dated December 29, 1975, of the Solicitor General to whom the case has been referred for investigation is limited to the original complaint filed by petitioner Gadit whose supplemental complaint which relates to respondent Paras alone and wherein the acts complained of are different will be the subject of a subsequent report as soon as the investigation thereof is completed.

After a review of the record, We find the recommendation of the Solicitor General that this case be dismissed to be in order. It is clear from the evidence that there was no improper, much less deceitful, intention in Atty. Paras and Atty. Feliciano's indicating in the complaint the address of complainant to be 2248-A San Anton, Sampaloc, instead of 2248 in the same street, for in fact the service of summons and the decision was made in the place of re-

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sidence of said defendant to persons not denied to be living with him.

Anent the alleged irregularity that the complaint of Atty. Feliciano for ejectment against petitioner and prepared and filed with Judge Guevara was not verified in violation of Section 1 of Rule 70, it can be said that respondent Paras should have been more careful in the preparation of his pleading; but since it does not appear that complainant was substantially prejudiced thereby, the facts alleged in the complaint having been duly proven at the trial ex-parte after the defendant was declared in default and it is not claimed that those facts are materially false, such defect was merely formal – it did not affect the validity and efficiency of the pleading, much less the jurisdiction of the court, (Oshita *vs.* Republic, 19 SCRA 700, 702-4) and should be raised in the proceeding itself, not in the appellate court or in an administrative complaint for the first time, (Phil. Mfg. Co. and Gov't. *vs.* Cabañgis, 49 Phil. 107, 112-113) there is no ground for taking any disciplinary action against any of herein respondents.

The Solicitor General has found that the charge of unauthorized taking of ₱600 levelled against Atty. Paras has not been proven. We agree with this finding.

In view of all the foregoing, this case is dismissed. No *prima facie* case having been shown against Judge Guevara, there is no need to refer his case for investigation by any other official.

Fernando, Chairman, Antonio, Aquino and *Concepcion Jr., JJ.*, concur.

Case dismissed.