ALFREDO FAVOR, COMPLAINANT, VS. JUDGE CESAR O. UNTALAN, REGIONAL TRIAL COURT, BRANCH 149, MAKATI CITY, RESPONDENT.

A.M. No. RTJ-08-2158 [Formerly OCA IPI No. 04-2018-RTJ]. July 30, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a verified complaint[1] dated May 10, 2004 filed by complainant Alfredo Favor with the Office. of the Court Administrator (OCA), charging respondent Judge Cesar Untalan[2] of the Metropolitan Trial Court (MeTC) Branch 39, of. Quezon City with: (1) illegal trespass to dwelling; (2) taking advantage of his office and position to act as an agent to sell real property; (3) assisting a private individual to settle a case; (4) harassment/coercion; and (5) violation of Rule 3.09 of the Code of Judicial Conduct.

Consolacion Abando was the registered owner of Lots 7, 8 and 9 at Halcon Street, Mandaluyong City. She mortgaged two of these lots to Francisco Lozada by way of accommodation for the principal debtor. Lozada eventually foreclosed Lots 8 and 9. Abando, instead of occupying Lot 7, which had not been foreclosed, took up residence at Lot 9.

Manolita Sta. Maria and Rosalina Guillarte were real estate agents who responded to an advertisement put up by Lozada for the sale of Lots 8 and 9. When Sta. Maria and Guillarte learned that Abando hailed from Pangasinan, they thought of asking respondent Judge, who was also from Pangasinan, to help them convince Abando to exchange Lot 9, which was in her possession, with Lot 7, which was in Lozada's possession. They asked respondent Judge to accompany them to the residence of Abando and persuade her to agree to exchange said lots for PI 00,000.00.

On October 6, 2001, at around 1:30 p.m., respondent Judge, Sta. Maria and Guillarte went to Abando's house at 516 Halcon Street, Mandaluyong City, where complainant Alfredo Favor, who was Abando's son-in-law, also resided.

In his Complaint, complainant alleged that respondent Judge pushed open the door of the house and placed his right foot inside so complainant could not close the door. Respondent Judge inquired if complainant was Alfredo Favor, to which complainant replied yes. Respondent Judge then told him, "Mr. Favor, mali ang tinitirahan niyo (you are living at the wrong address)." While saying this, respondent Judge, Sta. Maria and Guillarte entered the house and sat on the sofa.

Complainant averred that respondent Judge asked him to sit beside him, then told him to vacate the house because Sheriff Doblada and Lozada made a mistake in ejecting complainant and his family from their former residence. Complainant told him that it was no longer their fault, because they were made to transfer to their present house after the enforcement of the writ in the ejectment case. Respondent Judge said that he was only doing Lozada a favor, and asked complainant to talk to his in-laws about leaving the house, even writing his name and telephone number on a piece of paper.

Complainant claimed that, on October 7, 2001,[3] at around 7:40 a.m., he and respondent Judge talked on the telephone and arranged to meet at the latter's office at the Quezon City Hall at 1:00 p.m. Complainant was accompanied by Sheriff Cesar Abacahin of the Regional Trial Court (RTC) of Pasig, Branch 69, and Sheriff Mario Pangilinan of the Office of the Clerk of Court of RTC Pasig City. During their meeting, respondent Judge told complainant that Lozada had rejected their demand and would not pay them. Respondent Judge informed complainant that they would be ejected from their house in two months' time, and then asked complainant for his telephone number.

On July 7, 2003, complainant filed a Complaint[4] against respondent Judge, Sta. Maria and Guillarte with the Office of the City Prosecutor of Mandaluyong City. While filing his complaint, complainant saw respondent Judge, who asked him about the estafa case[5] filed by Lozada against the complainant. Complainant also alleged that respondent Judge offered him P100,000.00.

On the other hand, respondent Judge denied the allegations of complainant. He alleged that, while it was true that he, Sta. Maria and Guillarte went to the house at Halcon Street, Mandaluyong City in October 2001, respondent did not push open the door, because a young girl had opened the gate to let them in. He said that his companions had requested him to accompany them to that house for the purpose of offering the occupants therein the sum of P100,000.00 from Lozada for them to vacate the lot in question.[6]

Respondent Judge pointed out that, if the claim of trespassing and violation of domicile were true, complainant should have reported it to the barangay or to the police authorities. He reasoned that the complaint had been filed only on July 7, 2003, almost two years after the incident occurred.7

He likewise refuted complainant's claim that they talked on the telephone on October 7, 2001 at 7:40 a.m., because such date was the first Sunday of the month. Respondent Judge said that every first Sunday of the month, he left the house before 7:30 a.m. for the prayer assembly meeting of the Elder's Core Group of the Couples for Christ. He added that even if complainant went to respondent Judge's house on a Monday, the latter would not have been there, because he left the house every Monday at 7:00 a.m. in time for the flag ceremony at 8:00 a.m.[8]

Respondent Judge also maintained that he had only come to know of the case Lozada filed against complainant through the Judge's co-respondents in the complaint for violation of domicile. He explained that he had gone to complainant's house in October 2001 only to reconcile people, as it was his nature to mediate controversies of his neighbors. When the complaint against him was filed, he stopped assisting them.[9]

On September 1, 2004, the Office of the City Prosecutor of Mandaluyong City dismissed the complaint filed by complainant against respondent Judge, holding that:

> After a careful perusal of the contending allegations of the parties of the instant case, we find the evidence for the respondents to be more credible and reliable as against that of the complainant who waited for the lapsed (sic) of more than two years after the incident to file a complaint, if indeed he was really wronged by the respondents. This alone created a cloud of doubt as to his real intentions and motive which appears to be a clear afterthought of the charge of Estafa that was recently filed against him.
>
> WHEREFORE, for lack of probable cause, it is most respectfully recommended that the instant case be DISMISSED.
>
> RESPECTFULLY SUBMITTED.
>
> City of Mandaluyong.
> 1 September 2004.[10]

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In its Report[11] dated January 7, 2005, the OCA recommended that the instant complaint be referred to an Associate Justice of the Court of Appeals (CA) for investigation, report and recommendation within sixty (60) days from receipt of records.

In its Resolution[12] dated February 16, 2005, the Court referred the administrative complaint to Associate Justice Mario Guarina of the CA for investigation, report and recommendation within sixty (60) days from receipt of records.

In an Order[13] dated May 13, 2005, Associate Justice Guariña directed respondent Judge to answer the complaint in the instant administrative matter within fifteen (15) days from receipt, and set the hearing for June 15 and 17, 2005 at 10:00 a.m.

On May 26, 2005, respondent Judge submitted his Answer[14] in which he reiterated his denial of complainant's allegations. He further avened that it was only a coincidence that he met respondent at the Fiscal's Office of Mandaluyong City on July 7, 2003, where he went to pay a courtesy call to the new city prosecutor. Also, he denied that the P100,000.00 he offered complainant was bribe money.

Complainant, on the other hand, filed his Reply[15] on June 29, 2005. He explained that he did not report the incident which occurred on October 6, 2001 to the police because he believed that respondent Judge was outside the jurisdiction of the barangay. He only decided to file the complaint for violation of domicile when he saw respondent Judge making a follow-up of the case at the fiscal's office.

In an Order[16] dated August 17, 2005, the Investigating Justice gave the parties twenty (20) days therefrom to file their memoranda, after which the case would be deemed submitted.

In his Report and Recommendation dated December 2, 2005, the Investigating Justice made the following findings:

> Against this conflicting backdrop, we now come to evaluate the administrative charges of Favor against Judge Untalan.
>
> a) Trespass to dwelling as defined in the Revised Penal Code.
>
> The gravamen of the felony of trespass to dwelling under Article 280 of the Revised Penal Code is entering the dwelling of another against the tatter's will. While it is arguable that as the complainant charged, putting one's foot inside the door to prevent the complainant from closing it is entering against the will of the owner of the dwelling, the respondent denies that he did this. He is supported in his testimony by his companion Sta. Maria who was emphatic that they were allowed to enter the house by the persons who met them at the gate. They entered an open door and were already inside the house when the complainant appeared. This incident has been the subject of a criminal complaint filed by the complainant against them two years later before the Mandaluyong City Prosecutor's Office. The complaint was dismissed by the fiscal on this ground: We find the evidence for the respondents to be more credible and reliable as against that of the complainant who waited for the lapse of more than two years after the incident to file a complaint. This alone created a closed (sic) of doubt as to his real intentions and motive which appears to be a clear afterthought of the charge of estafa that was recently filed against him.
>
> We believe that the charge of trespass to dwelling even if resurrected as an administrative case cannot stand. The testimony of the complainant is uncorroborated and devoid of support from any other evidence on the record. It has also been rendered improbable by his own actuations. He did not make any seasonable complaint to the barangay or police authorities. Instead, he took the initiative of visiting the respondent at his office to pursue further negotiations with him. This cannot be the reaction of one who has been aggrieved by the unwanted and unwelcome visit of another. He then waited for two years before filing the case against the

respondent, and after he was himself charged by a person whom he thought the respondent was acting for. His reason for filing the trespass to dwelling case against the respondent is suspect. It is likely that he concocted a charge against the respondent and the two lady real estate agents as a leverage in the case filed against him by the person whom he believed they represented. The truth would under this scenario be compromised.

b) harassment/coercion

We entertain the same doubts with respect to this accusation. The complainant makes it appear that once inside his house, the respondent harassed and coerced him into accepting a settlement. The testimony is not confirmed by any witness to the occasion, and there is nothing on the record from which we can draw, circumstantially or otherwise, that this was in fact what happened. The respondent and his companion have sworn to a totally difficult (sic) account of the events that took place. The complainant tries to capitalize on the fact that it was through his door and not the door of his mother-in-law that the respondent entered. But as the respondent points out, whether they entered the door of the complainant or that of his mother-in-law, they were allowed to enter, and having been led into the house, they comported themselves in a proper and civilized manner.

The complainant has failed to meet the test of substantial evidence in proposing a version that is supported only by his lone testimony, is refuted by the testimonies of the other persons present on the occasion, and is not attended by any established fact or circumstance that might lend credibility to it.

c) Taking advantage of his office to act as an agent to sell real property.

This charge is totally negated by the evidence. The respondent was not acting as Lozada's agent to sell property. He accompanied his lady friends to the complainants' mother-in-law not to sell property to her but to convince her to swap lots as a way of correcting the error in the sheriffs execution. The respondent denies knowing Lozada personally, and there is no evidence that he was acting as a real estate agent to sell Lozada's property.

d) Violation of Rule 3.09 of the Code of Judicial Conduct.

This charge is misplaced. As pointed out by the respondent, this provision has to do only with the supervision of court personnel.

e) Assisting a private individual to settle a case.

This, more or less, encapsulates the action of the respondent as he himself admits. As a leftover from the days when he was an official of the Mandaluyong city government entrusted with the duty of settling land disputes, he continued as a judge to assist neighbors and friends in settling their land differences. He admitted to the Investigating Justice that in view of the events that happened, it was a mistake on his part to have gone to the house of the complainant's mother-in-law.

From our review of the provisions of the Canons of Judicial Ethics and Code of Judicial Conduct then applicable, we find that this behavior may fall under the most general terms of provisions that regulate the activities of a judge out of court. Thus:

Canon 3, Canons of Judicial Ethics: A judge's...personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life should be beyond reproach.

Rule 2.01, Code of Judicial Conduct: A judge shall so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Rule 2.03. Code of Judicial Conduct. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to carry the impression that they are in a special position to influence the judge.

> The respondent must understand that he cannot divorce himself, whether in and out of court, from his public persona as a judge. Thus, he must comport himself at all times in accordance with the canons of judicial ethics. Like a religious ministry, the judicial office imposes a demand on the lifestyle of the occupant, and anyone who accepts a judicial appointment must be deemed to have agreed to such imposition.
>
> As we view this case in its entirety, the action of the respondent, even unwittingly, in helping private persons settle a legal dispute may result in allowing the prestige of judicial office to be used to advance the private interests of others. This is a situation that judges must seek to avoid. The present Section 4, Canon I of the new Code of Judicial Conduct continues to caution against it.
>
> Since it appears that the respondent did not act with malice but with the best of intentions, failing only to foresee the consequences of his action, we believe that justice is served by admonishing the respondent, with a warning that a repetition of the act may warrant a more severe penalty.[17]

The Court finds the recommendation of the Investigating Justice to be amply justified.

Complainant alleged that respondent Judge committed trespass to dwelling when the latter and his companions entered the house of complainant's mother-in-law. He claimed that respondent Judge put his foot inside the door to prevent complainant from closing it, and once inside the house, harassed and coerced complainant into accepting a settlement.

Trespass to dwelling is penalized under Article 280 of the Revised Penal Code, the elements of which are: (1) the offender is a private person; (2) he enters the dwelling of another; and (3) such entrance is against the latter's will.[18]

While it is true that the act of putting one's foot inside the door constitutes entry against the implied prohibition of the occupant, complainant's allegation unfortunately remains uncorroborated. It is a settled rule in administrative proceedings that the complainant has the burden of proving by substantial evidence the allegations of his complaint.[19] As complainant has failed to submit proof of his statement, his testimony deserves scant consideration as compared with that of respondent Judge, which was supported by the affidavits of Sta. Maria and Guillarte categorically stating that the respondent Judge did not need to push open the door, because they were ushered inside by a young woman. Moreover, complainant failed to immediately report the incident to the authorities, which creates doubt as to what really occurred at his mother-in-law's house. Had he been the "disturbed person" lie described himself to be in his complaint, the reasonable thing to do would have been to call the attention of the barangay tanod or at least have the incident recorded in the police blotter.

Likewise, there is nothing from the records to show that respondent Judge committed an act of harassment or coercion toward complainant.

During trial, complainant himself recounted what happened when respondent Judge went to his mother-in-law's house on October 6, 2001. He testified:

> JUSTICE GUARIÑA III:
>
> You said that your address is 516 Halcon Street, Brgy.?
>
> COMPLAINANT:
>
> Yes, your honor.
>
> Q:
>
> That is actually part of Mandaluyong City?

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A:

Yes, Your Honor.

Q:

Is this the same place where you said Judge Untalan visited you in the afternoon of October 6?

A:

Yes, Your Honor.

Q:

Was that the first time you met J udge Untalan?

A:

Yes, Your Honor.

Q:

Did you know him already to be Judge Untalan?

A:

No, Your Honor.

Q:

Why did you say that when Judge Untalan stepping to your house holding papers in his right hand on October 6, you said that "Ikaw si Atty. Untalan" how did you come to presume that he was Atty. Untalan?

A:

I said you are the lawyer and he replied, Untalan.

Q:

So it was Judge Untalan who mentioned his own name?

A:

Yes, Your Honor.

Q:

Was he with other persons at that time?

A:

He was with the two lady companions, Your Honor.

Q:

Who were these two lady companions?

A:

Mrs. Sta. Maria and Mrs. Guillarte, Your Honor.

Q:

Did you already know these two persons at that time?

A:

I only knew Mrs. Sta. Maria, Your Honor.

Harassment has been defined as words, gestures and actions which tend to annoy, alarm and abuse (verbally) another person,[21] while coercion is synonymous to compulsion, constraint, a compelling by force or arms or threat.[22] In the present case, going over to one's house and informing him that he is living at the wrong address could hardly be construed as harassment or coercion. It is hard to believe that respondent Judge forced his way into the house, harassed and coerced complainant into accepting a settlement, and yet respondent Judge and his companions were able to stay at the house for an hour. The Court gives greater credence to the explanation of respondent Judge that he had merely accompanied Sta. Maria and Guillarte to the house occupied by complainant with the purpose of offering the occupant the sum of P100,000.00 from Lozada to vacate the lot.

Equally implausible are the contentions of complainant that respondent Judge took advantage of his office to act as an agent to sell real property, and that he violated Rule 3.09 of the Code of Judicial Conduct. Of the first, complainant again failed to substantiate such claim to prove that respondent Judge had in fact represented himself as acting on behalf of Lozada. Anent the second charge, the Investigating Justice correctly concluded that the Code of Judicial Conduct governs the supervision of court personnel, and is, therefore, inapplicable to the present case.

What therefore remains to be determined is whether respondent Judge assisted a private individual to settle a case.

Respondent Judge himself admitted that he went with Sta. Maria and Guillarte to help them convince Abando to exchange Lot 9, which was in her possession, with Lot 7, which was in Lozada's possession, for P100,000.00. He testified:

ATTY. PARAISO:

Q:

Judge Untalan, who are these two ladies that you are talking about?

RESPONDENT:

A:

I am referring to Chit Guillarte and Manolita Sta. Maria, sir.

Q:

And why are you with them?

A:

As I said earlier, they requested me to accompany them to the house of Mrs. Abando so that the problem of their client, I may be able to assist them.

JUSTICE GUARIÑA III:

Q:

At that time you were already a City Judge?

A:

MTC Judge of Quezon City, your honor.

Q:

And you agreed to the request to accompany them to the house of Mrs. Abando?

A:

Yes your honor, because as I have said, your honor, when there are emergencies in family life these two ladies help me.

Q:

What did they really request you to do when they asked you to accompany them to the house?

A:

To help them convince Mrs. Abando to agree to their proposal for an exchange of the lot with an offer of PI 00,000.00 and all the expenses of the exchange of the lot will be shouldered by Mr. Lozada.

Q:

Expenses for?

A:

For exchange of lots, your honor.

Q:

And you agreed to their request that is why you accompanied them?

A:

Yes, your honor.

Q:

Did it not occur to you at that time that your access might be misinterpreted since you are already a judge?

A:

No your honor because when I was the Chief of the State Management Development Office of Mandahiyong, basically that was my job to patch up problems and to settle squatters and arrange for land disputes, your honor. I usually arbitrate land dispute of Mandahiyong so maybe because of that I was able to successfully mediate so many land disputes in Mandahiyong and they were beneficiaries also of the land-owner that they have been selling and because of this I stopped now that is why most of my neighbors say I became difficult to reach now because of this problem presented by Mr. Favor.

Q:

Are you suggesting Judge that prior to this incident even as a judge you are still engaged in disputes between people there in your place?

A:

I choose, your honor, if the one requesting is close to me, then I call them to my house then I will try to explain to them that its better to agree now on a settlement rather than you go to Court because its difficult to go to Court and its too expensive so I call the parties.

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Q:

And you were explaining to both parties?

A:

Yes, your honor, I always see to it that both parties are present.

Q:

How did these conferences turn out?

A:

Usually it turn (sic) out successful. I will request now to go to the barangay and execute the necessary agreement that we may have.

Q:

It was with that intention that you accompanied these two ladies on October 6, 2001 in the house of Mrs. Abando? A: Yes, your honor.[23]

Canon 2 of the Code of Judicial Conduct[24] states that a judge should avoid impropriety and the appearance of impropriety in all activities. The following are likewise pertinent to the present case:

> Rule 2.01. - A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.
>
> Rule 2.03. - A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

By using his position to help private persons settle a legal dispute, respondent Judge is administratively liable under Rule 2.03 of the Code of Judicial Conduct. His intentions may have been noble as he sought to make complainant realize that he had been occupying by mistake the property subject of the dispute, but respondent Judge should be mindful to conduct himself in a manner-that gives no ground for reproach. The Court held in Miranda v. Judge Mangrohang[25] that a judge's private life cannot be dissociated from his public life and it is, thus, important that his behavior both on and off the bench be free from any appearance of impropriety.

The Court has previously reprimanded judges who have used their office for private interests. In the aforecited case of Miranda v. Judge Mangrobang, Sr.,[26] the respondent judge who engaged in business and in private practice of law was reprimanded and warned that a repetition of the same or similar acts in the future would be dealt with more severely. In Marces, Sr. v. Arcangel, the respondent judge was also reprimanded for attending barangay conciliation proceedings at the request of one of the parties, and for introducing himself as an Executive Judge of the RTC.

In the present case, the Investigating Justice recommended that respondent Judge be admonished, witli a warning that a repetition of the same or similar act shall warrant a more severe penalty. While there was no categorical finding of bad faith or malice on the part of respondent Judge, who was motivated by the noble intention of settling the property dispute between Lozada and Abando, however, he must bear in mind that his office demands an exacting standard of decorum to promote public confidence in the integrity and impartiality of the judiciary. Respondent Judge should be more prudent in the observance of his dealings with the public to obviate the mistaken impression of impropriety in that he is probably using his position as a judge to impose improper pressure or exert undue influence so as to obtain the desired result in a given situation. Thus, considering that

respondent Judge violated Rule 2.03 of the Code of Judicial Conduct, the Court deems it appropriate to impose a stiffer penalty of a fine of P5,000.00 with stern a warning so as to deter him from committing the same or similar acts in the future.

WHEREFORE, respondent Judge Cesar Untalan of the Regional Trial Court, Branch 149, Makati City, is found GUILTY of violation of Rule 2.03 of the Code of Judicial Conduct and ordered to pay a FINE of P5,000.00 with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.
Brion,[*] J., on official leave.

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[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per raffle dated July 13, 2009; On official leave.

[1] Rollo, pp. 1-4.

[2] Now Presiding Judge of tlje Regional Trial Court (RTC), Branch 149, Makali City.

[3] In his testimony dated August 5, 2005, complainant said he made a mistake in the date and changed it to October 8, 2001 (TSN, August 5, 2005, p. 8).

[4] Docketed as Invoice Slip No. 03-56286-G; rollo, p. 5.

[5] Docketed as Invoice Slip No. 03-55308-E.

[6] Counter-Affidavit dated July 30, 2003, rollo, pp. 15-16.

[7] Letter to the OCA dated July 5, 2004, id. at 12-14.

[8] Id.

[9] Id.

[10] Id. at 23-24.

[11] Id. at 27-28.

[12] Id. at 29,

[13] Id. at 31.

[14] Id. at 32-37.

[15] Id. at 60-61.

[16] Id. at 173.

[17] Report and Recommendation dated December 2, 2005, pp. 22-25.

[18] Marzalado, Jr. v. People of the Philippines, G.R. No. 152997, November 10, 2004, 441 SCRA 595, 603.

[19] Santos v. Judge Lacurom, A.M. No. RTJ-04-1823, August 28, 2006, 499 SCRA 639.

[20] TSN, August 5, 2005, pp. 4-6.

[21] Black's Law Dictionary Abridged Fifth Ed., p. 365. "

[22] Id. at 135.

[23] TSN, August 12, 2005, pp. 13-15.

[24] Promulgated September 5, 1989, effective October 20, 1989.

[25] A.M. No. RTJ-01-1665, November 29, 2001, 371 SCRA 20, 25. supra. 27 328 Phil. 1 (1996).

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