

**MAGDALENA CALDERON VDA. DE OJEDA, EULOGIO OJEDA, AND
VIRGILIO OJEDA, HEIRS OF APOLONIO OJEDA, COMPLAINANTS, VS.
NOTARY PUBLIC DANIEL BALANOBA, RESPONDENT.**

Adm. Case No. 1080. February 23, 1973

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ANTONIO, J.:

Respondent Daniel Balanoba, a member of the Philippine Bar, is charged in this administrative case filed with this Court by complainants on April 27, 1972, as follows:

"2. That sometime on or about the 27th day of October, 1969, complainants confronted by pressing financial problems were constrained to execute a Real Estate Mortgage of their lot to a certain Mr. Maximo M. Cabrera for P17,000.00 for a period of five (5) months although actually or in truth and in fact only P12,550.00 was given to complainants hereof as the P4,550.00 was deducted in advance by the agent for advance interest and supposed financing expenses;

"3. That in said instrument, it was made to appear by herein respondent Notary Public that complainants personally appeared before him all known to him, and by him known to be the same persons who executed said mortgage, and they all acknowledged to him that the same is their free and voluntary act and deed when in truth and in fact they have not personally seen, they do not know, or that they have not even gone to the residence of the mortgagee therein, nor seen that same mortgagee in the course of the transaction;

"4. That said act of respondent is not only a pure and simple falsification but is even a serious misconduct or a malpractice on a notary public and as a lawyer that is also not only degrading to the profession but even detrimental to the innocent and unsuspecting public;

"5. That if only they had the opportunity of seeing or personally appearing before respondent notary public, they could have complained or registered their protest that actually, they received P12,550.00 only while what appears in the document is P17,000.00;

"6. That as a result of said mortgage with a very usurious interest, the mortgagee has extrajudicially foreclosed or is foreclosing said mortgage to the damage and prejudice of complainants herein."

Respondent filed his answer to the petition admitting that complainants executed a deed of real estate mortgage over their property in favor of one Maximo Cabrera, but denied the rest of the averments contained therein and interposed a number of affirmative defenses, one of which was the fact that complainants

admitted the execution of the deed of real estate mortgage and their only complaint is that the creditor-mortgagee deducted a substantial sum from the proceeds of the loan for "interest and financing expenses" a matter which should have been addressed to the said creditor before complainants accepted the loan or executed the mortgage.

Under date of January 22, 1972, the Solicitor General submitted his report wherein, after enumerating the various dates in which the investigation was set, without the complainants adducing any evidence against respondent, as the investigation was always postponed, he recommended the dismissal of the case in view of the Motion to Dismiss filed by complainants on December 19, 1972 which states thus:

"COMPLAINANTS, by and through their undersigned counsel, unto this Honorable Court most respectfully show:

" 1. That the basis of the complaint hereof is the document concerning a Real Estate Mortgage which became also the basis of a civil suit with the Court of First Instance of Manila;

"2. That said parties after exchanging and comparing notes have at last realized that their difference was a product of sheer misunderstanding and realizing it to be such, they have mutually agreed to settle their differences;

"3. That such being the case, they have lost interest in prosecuting this case, hence, this motion to beg this Honorable Court to dismiss this case.

"WHEREFORE, in view of all the foregoing consideration, it is most respectfully prayed of this Honorable Court that this case be dismissed."

Prescinding from the aforementioned desistance of complainants in prosecuting the case, We notice that complainants had admitted that they executed the deed of mortgage and that this complaint was only filed on April 29, 1972 or more than two years after the execution of the deed of mortgage on October 27, 1969 and when the mortgagee was already foreclosing the mortgage obviously due to their failure to pay the said obligation.

In the circumstances of the case, complainants should have tempered their enthusiasm in filing the complaint, for charges meriting disciplinary action against a member of the Bar should be supported by clear and convincing evidence. Certainly it should not be initiated where the case is not free from doubt.

WHEREFORE, the present complaint is hereby dismissed and respondent is exonerated of the charges against him. Let a copy of this resolution be attached to respondent's record in the Roll of Attorneys.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

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