

**ROGELIO A. MIRANDA, COMPLAINANT, VS. ORLANDO A. RAYOS,
CESAR I. VALENZUELA, DIONISIO HERNANDEZ, NESTOR E.
VALENZUELA AND RAUL E. TOTAÑES, RESPONDENTS.**

Adm. Case No. 2974. November 15, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The complainant charges: (a) all the respondents with estafa and misconduct, and (b) Orlando A. Rayos with malpractice, and asks for their disbarment.

Miranda alleges on December 26, 1985, that Orlando Rayos sold him a piece of land for P250,000.00, of which consideration he paid the initial amount of P150,000.00, with the understanding that he would assume the seller's mortgage debt of P100,000.00 with the Philippine Savings Bank.[1] He paid the first three amortizations in the total amount of P87,864.94,[2] but when he tendered his payment for the fourth and last amortization on December 23, 1986, the other respondents, who are all officers and employees of the PSB, rejected his payment, informing him that Rayos had already paid the said amortization and that, as the mortgagor, he was entitled to the delivery of the title to the mortgaged property.[3]

Besides this contract, Miranda and Rayos had entered into an agreement on May 13, 1986, under which the latter undertook to represent the former in his complaint against the Manila Banking Corporation for unilaterally increasing the interest on his loan from 24% to 52%. It was stipulated that 70% of whatever damages the complainant could recover would be to his account, with the other 30% going to Rayos as contingent fee.[4] In the end, a compromise was reached with the defendant bank and the complainant's loan of P110,000.00 was considered fully paid even as his claim for damages was also withdrawn. This was embodied in a decision rendered by the Regional Trial Court of Makati on October 23, 1986.[5]

Rayos charged Miranda the amount of P5,631.93 representing his contingent fee in this case,[6] but the complainant demurred. Miranda pointed out that he had collected no damages whatsoever as the amount considered paid consisted of the principal of his loan plus the original interest, which was what he had insisted on in the first place.[7] Contending that he had negotiated the compromise agreement with Manilabank and so was entitled to payment for his professional services, Rayos then sought the annotation of an attorney's lien on the title to the land offered to secure the MBC loan.[8] The complainant says it was Rayos who suggested that he file the complaint against Manilabank in the first place and accuses him of "ambulance-chasing." He adds that although he did not benefit from the suit, he paid Rayos a fee of P1,500.00, which the latter accepted.[9]

Coming back to the loan with PSB, Miranda submits that the bank had previously accepted his first three payments and by so doing approved his assumption of Rayos's mortgage debt. Hence, the other respondents had no right to refuse his fourth payment and to deliver the certificate of title not to him but to Rayos, who no longer had any claim to the property. These respondents insist, however, that the complainant had never formally assumed the mortgage debt nor had the bank agreed to such assumption, and that Rayos had specifically asked

them not to deliver the title to the complainant.

On January 2, 1987, the complainant filed an action for damages against Rayos and prayed for a writ of attachment which was granted but subsequently discharged by the Regional Trial Court of Makati.[10] That denial was affirmed by the Court of Appeals,[11] which was in turn sustained by this Court on October 26, 1989, in G.R. No. 80030.[12]

Miranda also filed a criminal complaint with the Provincial Fiscal's Office of Rizal against Rayos and the other respondents for estafa, but this was dismissed[13] and the motion for reconsideration was denied.[14] On appeal to the Department of Justice, the dismissal was affirmed on July 26, 1988, with Undersecretary Silvestre Bello III holding in part as follows:

The appeal is not impressed with merit.

The record shows that complainant is not even sure of what kind of estafa was allegedly committed by respondents. In his complaint affidavit he clearly and categorically stated that respondents were guilty of estafa with unfaithfulness or abuse of confidence under Article 315, paragraph 1(b) of the Revised Penal Code (misappropriating or converting money or goods received in trust, etc.); however, after respondent spouses had submitted their joint counter-affidavit, complainant filed a manifestation dated March 13, 1987 stating that he "made a mistake in pinpointing the particular mode or kind of estafa committed" and that respondents should be held liable for estafa by false pretenses or fraudulent acts prior to or simultaneously with the commission of the fraud under Article 315, par. 2(a) of the Revised Penal Code.

Complainant's claim that fraud was employed by Orlando Rayos during the transaction because he withheld information that the sale and assumption of mortgage was subject to the approval of the PSB is untenable.

It is difficult to imagine that complainant would be so naive as to be totally unaware of the provisions of the original contract between the PSB and the spouses Rayos. He is a degree holder (A.B. Pre-Law and B.S.C.) and Acting Municipal Treasurer of Las Piñas. In short, he is not an ordinary layman. As a buyer with a knowledge of law, it was unnatural for him to read the provisions of the real estate mortgage wherein it is provided, among others, that the sale of the property covered by the mortgage does not in any manner relieve the mortgagor of his obligation but that "on the contrary, both the vendor and the vendee, or the party in whose favor the alienation or encumbrance is made shall be jointly and severally liable for said mortgage obligations." There is every reason to believe that it was pursuant to the said provision in the real estate mortgage that complainant tried to assume the loan obligation of the Rayoses by filling up and submitted the loan application (page 30, records) sent by Orlando Rayos. By signing the loan application and the general information sheet (page 31, records) in connection with said application, complainant showed that he knew that there was a need to formally apply to the bank in order for him to assume the mortgage.

We find respondent spouses' version that when complainant's application to assume the mortgage loan was disapproved he begged that he be allowed to pay the quarterly amortization credible, owing to the fact that complainant made the payments for the account of the Rayoses. Hence, complainant knew that since his application to the PSB was not approved, there was no substitution of parties and so he had to pay for the account of respondent spouses as shown by the receipts issued by the PSB (page 196-197, records).

As for the charge that Rayos paid the last installment to block complainant from getting the title and transferring the same to his name, respondents' version is more satisfactory and convincing. Respondent Orlando Rayos paid the last amortization when it became apparent that complainant would not be able to give the payment on the due date as he was still trying to sell his Lancer car. Even if complainant was able to pay the last installment of the mortgage loan, the title would not be released to him as he knew very well that his application to assume the mortgage was disapproved and he had no personality as far as PSB was concerned.

It is absurd to claim that fraud can be inferred from the mere fact that complainant failed to get the title over

the property in question. As clearly shown in the records, respondent Orlando Rayos repeatedly offered to turn over to the complainant the TCT to the property which was redeemed from the PSB upon payment by complainant in cash of the amount paid by Rayos as fourth and final amortization plus some fees or charges. The letters sent by Rayos (pages 166-167, records) show that it is not true that Rayos refused to deliver to the complainant TCT No. 100156 but was willing to hand it over any time complainant pays him the amount representing the last amortization. However, even before the said TCT was finally released to the respondent spouses on January 13, 1987, complainant filed his complaint with the Fiscal's Office on January 7, 1987.

The evidence points to the fact that complainant knew the nature of the transaction he had with respondent spouses at the time the deed of sale with assumption of mortgage was executed by the parties. He knew that there was need of approval by the PSB before he could formally assume respondent spouses' mortgage obligation hence, false pretense is negated. Respondents' liability, if any, is not criminal but civil.[15]

It is clear that as far as the other respondents are concerned, the charge must fail entirely. As officers and employees of the PSB, they were only discharging their duties conformably to the real estate mortgage executed by Rayos, who remained the mortgage debtor inasmuch as there was no record of approval of the complainant's assumption of the mortgage debt. The complainant has acknowledged as much in his motion for reconsideration with the office of the provincial fiscal, where he pressed his charges only against Rayos.[16]

But he must fail even with Rayos because the evidence, as assessed by Undersecretary Bello, with whom we agree, shows that it is the complainant who has refused to accept Rayos' offer to turn over the certificate of title to the subject land. The only provision was that Rayos be reimbursed the amount of P29,223.76 which he had paid on the final amortization of the mortgage debt. As a result of Miranda's refusal, Rayos has filed a complaint against him for specific performance which is still pending in the Regional Trial Court of Manila.[17] We do not pre-empt judgment in that case but limit ourselves to the record in the administrative case. That record shows that Rayos cannot be faulted for demanding the amortization payment he has made on behalf of the complainant as a condition for his release to him of the title to the mortgaged land. Such a demand, regardless of its intrinsic merit, does not make him guilty of impropriety as a lawyer.

Regarding Rayos's claim for attorney's fees in the Manilabank case, that too is the subject of his pending complaint against the complainant. Whether or not that claim is valid, on which we also do not rule at this time, we hold that he had not acted improperly in charging for his professional services on the contention that he was entitled to the fees agreed upon because of the benefits he claims to have obtained for his client. The mere charging of attorney's fees, especially if there appears to be some basis therefor, is not per se conduct unbecoming a member of the bar.

The Court observes that all this unpleasantness could have been avoided if the complainant had accepted Rayos's offers to iron out their differences as manifested especially in his letters to the complainant dated January 3, 1986, January 5, 1986, January 17, 1986 and January 20, 1987.[18] Miranda stresses that these letters were sent only after he had taken legal action against Rayos and do not reflect the latter's good faith. That may be so, but this was still no impediment to an amicable settlement that could have placed their bitterness and mutual recriminations behind them. It is hoped that the pending litigation between the parties may still be resolved in that spirit of trust and friendship that used to characterize their relations.

WHEREFORE, the complaint against all the respondents is DISMISSED. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 2.

[2] Annexes "6," "7," and "8."

[3] Rollo, p. 5.

[4] Annex "H."

[5] Judge Jesus F. Guerrero, Regional Trial Court of Makati, National Capital Judicial Region, Branch CXLVIII.

[6] Annex "L."

[7] Rollo, p. 3.

[8] Annex "M."

[9] Rollo, p. 4.

[10] Rollo, p. 64, G.R. No. 80030.

[11] Chua, J., ponente, with Ejercito and Lapeña, JJ., concurring.

[12] Miranda v. Court of Appeals.

[13] Rollo, p. 79.

[14] Ibid., p. 175.

[15] Id., pp. 204-205.

[16] Id., p. 156.

[17] Annex "7."

[18] Annexes "4" to "4C."

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