

EDITHA O. CATBAGAN, COMPLAINANT, VS. JUDGE FELIXBERTO P. BARTE, MUNICIPAL CIRCUIT TRIAL COURT, TOBIAS FORNIER, ANTIQUE, RESPONDENT.

A.M. NO. MTJ-02-1452 (FORMERLY OCA IPI NO. 01-1119-MTJ). April 06, 2005

Ponente: CORONA, J.

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CORONA, J.:

In a verified letter-complaint[1] dated September 17, 2001 addressed to the Honorable Chief Justice, through the Office of the Court Administrator (OCA), complainant Editha O. Catbagan charged respondent Judge Felixberto P. Barte of the 1st Municipal Circuit Trial Court (MCTC), Tobias Fornier, Antique with "grave and serious misconduct." [2]

In the first week of May 1999, complainant received information that the Church of Jesus Christ of Latter Day Saints, Inc. (Church) was interested in buying land in the Province of Antique. She immediately approached respondent judge and requested him to assist her in the prospective transaction. Together with a certain Abraham Pedriña, the three agreed that in case they succeeded in brokering the sale of the properties to the Church, their commission would be divided in this manner:

x x x the three of us agreed in the house of Judge Barte that for every sale transaction if the purchase price exceed One Million Pesos, the two of us will receive a commission of P100,000.00 each while the remaining amount or net gain be retained by Judge Barte as his commission based on his agreement with the vendors.[3]

When requested to put their agreement in writing, respondent judge allegedly answered: "A municipal trial judge occupies the forefront of the judicial arm that is the closest in reach to the public he serves and he must accordingly act at all times with great constancy and utmost probity." Complainant did not insist on her request after hearing this.

The three of them subsequently conferred with Bobby J. Villalobos, the district president of the Church. They offered the parcels of land owned by Bitoon Cezar and Aurea Clarin in Sibalom, Antique.[4]

Thereafter, on January 18, 2001, the Church agreed to purchase lots 336-A and 336-B owned by Bitoon Cezar for P1,120,300.[5]

Lot 334 owned by Aurea Clarin was also sold for P2,199,000 on February 19, 2001.[6]

Meanwhile, lot 5555 located in Hamtic, Antique owned by Eleanor M. Checa-Santos was sold on February 12, 2001 for P2,300,000.[7]

For the first two sales, complainant claimed she was entitled to a P300,000 commission.

Since the Church transacted with respondent only, it paid the price of the properties to him. Respondent then delivered the amount due to the vendors.

When complainant heard that the vendors had been paid, she demanded her commission from respondent. However, respondent offered her only P25,000 for the two transactions, excluding the one in Hamtic.

Complainant later learned that respondent received a P435,226.55 commission from the Aurea Clarin transaction alone.[8]

Complainant reminded respondent of their agreement but respondent challenged complainant "to go to court." Instead of pursuing her claim in a civil suit, however, complainant opted to file the present administrative case against respondent on September 17, 2001.

In a 1st Indorsement[9] dated October 18, 2001, Court Administrator Presbitero J. Velasco, Jr. referred the complaint to respondent for his comment on the charge of conduct unbecoming of a judge.

In his comment,[10] respondent denied the charge against him and asked for the dismissal of the administrative case on the following grounds:

First, there was ambiguity in the charge of grave and serious misconduct in the complaint and conduct unbecoming of a judge in the OCA indorsement. Because of this confusion, he was deprived of his right to be informed of the real charge against him. Consequently, he was not able to properly prepare his defense.

Second, complainant's allegations were baseless and designed merely to harass and dishonor respondent. According to him, complainant and Pedriña went to his house and told him about the intention of the Church to buy land in Antique. Subsequently, he informed the chapter president of the Church that there were several parcels of land in the Municipality of Sibalom that met their requirements. For two years, he spent after-office hours and weekends to consummate the transaction. He labored hard because the transaction could augment his meager income and enable him to send his three children to good colleges in Iloilo City. He admitted that Pedriña assisted him but maintained that complainant had no involvement in the transaction other than attending the initial meeting with the chapter president. He claimed that it was he, not the complainant, who looked for the land to be sold to the Church. He submitted the sworn affidavit[11] of the vendor's lawyer, Atty. Francisco Javier, who never met the complainant nor transacted with her. Respondent also claimed that the agreement was for him to shoulder all the expenses relative to the transaction, including its documentation. Pedriña's affidavit supported respondent's claim that they never agreed on a commission scheme, contrary to complainant's assertion. If ever respondent gave money for any information or assistance in the transaction, the amount depended entirely on his discretion.

In a report and recommendation[12] dated June 13, 2002, the OCA found respondent not guilty of the charges against him but recommended a fine of P5,000 for violating Canon 5, Rule 5.02[13] of the Code of Judicial Conduct. It also warned respondent against directly engaging in any private business even outside office hours, otherwise a more severe penalty would be imposed upon him. The OCA further noted that another administrative case, entitled Jose Berin and Merly Alorro v. Judge Felixberto P. Barte,[14] had been filed against respondent. It involved a transaction similar to the one in this complaint.

Initially, we will discuss respondent's assertion that this administrative case should be dismissed for being ambiguous. According to respondent, the confusion denied him the opportunity to properly defend himself.

Despite the apparent confusion brought about by the charge of (1) "grave and serious misconduct" in the complaint and (2) "conduct unbecoming of a judge" in the OCA indorsement, the dismissal of the complaint is not warranted. The records show that respondent refuted both charges in his comment and manifestation.[15] The OCA could not be faulted for describing the charge as "conduct unbecoming of a judge" (instead of "grave and serious misconduct") because the allegations pointed to none other but that offense. Noticeably, in complainant's reply[16] and letter-request[17] for early resolution, she consistently described her charge against respondent as

"conduct unbecoming of a judge." We therefore cannot dismiss outright the administrative case on this ground alone, considering that respondent knew fully well what he was being charged with. In fact, he defended himself against the charges.

In a long line of cases, we have held that the essence of due process in administrative proceedings is simply the opportunity to explain one's side.[18]

The question of whether complainant was or was not entitled to a commission for her efforts in the sale of the parcels of land to the Church should be threshed out in a proper civil case.

What is therefore left for us to thresh out is respondent's administrative liability for his admitted financial and business dealings.

We note the OCA's observation that this is not the first time an administrative case of the same nature has been filed against respondent. In *Jose Berin and Merly Alorro v. Judge Felixberto P. Barte*,[19] respondent judge was also charged with grave and serious misconduct for refusing to give the complainants therein their respective commissions in the sale of land to the Manila Mission of the Church of Jesus Christ of Latter Day Saints, Inc. The Court, in that case, found respondent guilty of violating Canon 5.02 of the Code of Judicial Conduct:

By allowing himself to act as agent in the sale of the subject property, respondent judge has increased the possibility of his disqualification to act as an impartial judge in the event that a dispute involving the said contract of sale arises. Also, the possibility that the parties to the sale might plead before his court is not remote and his business dealings with them might not only create suspicion as to his fairness but also to his ability to render it in a manner that is free from any suspicion as to its fairness and impartiality and also as to the judge's integrity.

The Code of Judicial Conduct mandates that "[a] judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification." [20]

Canon 25 of the Canons of Judicial Ethics also cautions a judge from "x x x making personal investments in enterprises which are apt to be involved in litigation in his court x x x."

As observed by the OCA, respondent judge should have refrained from participating in the transaction. By allowing himself to act as an agent in the sale of the properties, respondent increased the possibility of his disqualification in the event that a dispute involving the said contracts of sale arose. Moreover, the possibility that the parties in the sale might have appeared before his court was not remote and his business dealings with them would have then created a doubt about his fairness and impartiality.

Respondent submits that the jurisdiction of the 1[st] MCTC covers the Municipalities of Tobias Fornier, Hamtic and Aniniy. The 2[nd] MCTC, on the other hand, covers Sibalom, San Remigio and Belison. Hence, since the parties and subject matter involved in the controversy were not within the jurisdiction of the 1[st] MCTC, his judicial authority could have never been invoked had a case arisen from the transaction.

We find, however, that his claim is not exactly correct. Respondent himself emphasized to this Court in his manifestation[21] dated February 23, 2004 that, aside from his duties in the 1[st] MCTC, he was also designated as Acting Presiding Judge of the 5[th] MCTC and in several cases in the Municipal Trial Court (MTC) of San Jose, Antique. Considering this, the likelihood that he could have also been designated in the 2[nd] MCTC (with jurisdiction over Sibalom) was neither remote nor impossible. Had any of the parties in the subject transaction

filed suit, his inhibition would have been called for because of his aforecited business dealings.

Given these circumstances, respondent judge ought perhaps to seriously consider leaving the judiciary and becoming a full-time real estate broker instead. The latter calling appears to have a special appeal to him.

Although every office in the government is a public trust, no position exacts greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. A magistrate of the law must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[22]

We acknowledge that respondent has been in judicial service since 1990 up to the present. We find his declaration that no criminal or civil case has ever been filed against him to be true. However, the present administrative case and an earlier decided case with similar facts are too glaring to ignore. In that case, we reminded him that judges must not only be "good judges" but must also "appear to be good persons." [23] In the judiciary, moral integrity is more than a cardinal virtue; it is a necessity.[24]

In *Poso v. Mijares*, [25] we held that "public interest in an adept and honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, ad infinitum, but by discipline through appropriate penalties."

As already mentioned, respondent was previously sanctioned for an identical infraction involving the sale of land to the Church of Jesus Christ of the Latter Day Saints, Inc. We ordered him to pay a fine of P2,000, admonished him to be more discreet and prudent in his private dealings and warned him that a similar infraction would be sanctioned more severely.[26] This second administrative case therefore reveals a certain kind of avarice on the part of respondent. Hence, we are constrained to impose upon him a heavier penalty than the OCA-recommended fine.

WHEREFORE, respondent Judge Felixberto P. Barte is hereby found guilty of violating Canon 5.02 of the Code of Judicial Conduct. Considering that this is his second offense, he is hereby **SUSPENDED** for six (6) months. He is hereby warned that another complaint of this kind will merit a penalty beyond mere suspension from public office.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 1-3.

[2] In complainant's reply and letter-request for early resolution, she apparently changed her charge against respondent from "grave and serious misconduct" to "conduct unbecoming of a judge;" See page 8 of this Decision.

[3] *Id.*, p.1.

[4] *Id.*, p. 4.

[5] Deed of Absolute Sale between Bitoon Cezar and the President of the Manila Mission of the Church of Jesus Christ of the Latter Day Saints, Inc., *Id.*, pp.5-7.

[6] Deed of Absolute Sale between Aurea Clarin and the President of the Manila Mission of the Church of Jesus Christ of the Latter Day Saints, Inc., *Id.*, pp. 8-10.

[7] Deed of Absolute Sale between Eleonor M. Checa-Santos and the President of the Manila Mission of the Church of Jesus Christ of the Latter Day Saints, Inc., Id., pp. 12-14.

[8] PNB check no. 0692958 issued to Felixberto Barte by Aurea Clarin; Id., p.11.

[9] Id., p. 15.

[10] Id., pp. 32-36.

[11] Id., p. 38.

[12] Id., pp. 40-44.

[13] Canon 5, Rule 5.02 - A judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with Congress or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

[14] 434 Phil. 772 (2002).

[15] Id., pp. 54-58.

[16] Id., p. 45.

[17] Id., p. 52.

[18] Unicraft Industries International Corporation v. Court of Appeals, 424 Phil. 534 (2002).

[19] See note 11.

[20] Rule 5.02, Canon 5, Code of Judicial Conduct.

[21] See note 12.

[22] Casimiro v. Judge Octavio Fernandez, et al.; A.M. No. MTJ-04-1525; January 29, 2004.

[23] See note 16.

[24] Office of the Court Administrator v. Sayo, Jr., 431 Phil. 413 (2002).

[25] 436 Phil. 295 (2002).

[26] See note 20.

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