

AMBROSIO SABAYLE, COMPLAINANT, VS. HON. TEODULO C. TANDAYAG, ATTY. CARMELITO B. GABOR AND ATTY. PABLO B. BADONG, RESPONDENTS.

A.C. No. 140-J. March 08, 1988

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PER CURIAM:

In a sworn complaint for suspension or disbarment dated 15 December 1968, complainant Ambrosio Sabayle charged respondent Teodulo C. Tandayag, then Presiding Judge of the Court of First Instance of Lanao del Sur, respondent Atty. Carmelito B. Gabor and respondent Atty. Pablo B. Badong with the following:

Judge Teodulo Tandayag - Misconduct in office, inefficiency and incompetence;

Atty. Carmelito B. Gabor - Violation of his duties as Notary Public by acknowledging a Deed of Sale in the absence of the purported vendors and for taking advantage of his position as Assistant Clerk of Court by purchasing one-half (1/2) of the land covered by said Deed of Sale knowing that that Deed of Sale was fictitious; and

Atty. Pablo B. Badong - Negligence in the performance of his professional duties by failing to file an Opposition to a Motion in Civil Case no. IL-43 handled by him for complainant, and failing to take an appeal from the decision of the Court of Appeals in C.A. - G.R. No. 30302-R, dated 5 May 1967, to the Supreme Court after having received the sum of P4,500.00 as court fees, transportation expenses and attorney's fees.

By a Resolution dated 3 February 1969, the Court required the respondents to file their Answers to the complaint, which all the respondents did in due course.

After consideration of the Answers filed by the respective respondents, the Court, by a Resolution dated 8 August 1969, resolved to dismiss the complaint insofar as respondent Judge Teodulo C. Tandayag was concerned, and referred the case to the Solicitor General for investigation, report and recommendation insofar as respondent Attorneys Gabor and Badong were concerned.

Fourteen (14) years later, because of the difficulty of securing the appearance in Manila of the parties who all resided in Iligan City, then Assistant Solicitor General Eduardo Montenegro referred the case on 28 June 1983 to the City Fiscal of Iligan City for investigation, report and recommendation.

In a Report and Recommendation dated 23 January 1984, Dominador L. Padilla, City Fiscal of Iligan City, found that respondent Pablo B. Badong had died on 11 August 1983; that complainant Ambrosio Sabayle had "miserably failed to prove the charges he [had] alleged in his complaint before the Honorable Supreme Court with sufficient evidence" against both respondents Carmelito B. Gabor and Pablo B. Badong; and therefore recommended that complainant's charges against both respondents Badong (deceased) and Gabor be dismissed.

On 5 November 1987, the Solicitor General filed his Report and Recommendation dated 27 October 1987. The background facts, as found by the Solicitor General, may be summed up as follows:

- In 1961, the Court of First Instance of Lanao del Norte, in Civil Case No. IL-43 entitled "Lucas Sebua, et al.

v. Ambrosio Sabayle" for enforcement of subsidiary civil liability and for damages, rendered judgment against therein defendant Sabayle requiring him to pay P7,000.00 as indemnity for death, moral damages and attorney's fees.

- To avoid execution pending appeal, Sabayle filed a Supersedeas Bond which, together with the Record on Appeal and Appeal Bond, were approved by the judge and forwarded to the Court of Appeals. Sabayle's appeal was there docketed as C.A. - G.R. No. 30302-R.

- While the case was pending before the Court of Appeals, one of the bondsmen in the Supersedeas Bond, Mr. Pedro Lim, filed an Urgent Motion to Release Movant from the Effects of his Supersedeas Bond. Plaintiff-appellee's counsel opposed Pedro Lim's Motion; respondent Atty. Pablo Badong, counsel of defendant-appellant (Sabayle) did not interpose any objection to the Motion. Respondent Judge Tandayag of the trial court approved Mr. Pedro Lim's Motion in an order dated 21 December 1967 which also approved a Surety Bond filed by complainant Sabayle in lieu of the real property of Pedro Lim.

- Complainant Sabayle had shortly before obtained a Surety Bond from the Manhattan Guarantee Company, Inc. (Manhattan, in brief) and submitted a piece of land owned by him to Manhattan as collateral supporting what Sabayle believed to be his indemnity agreement. Both the Surety Bond issued by Manhattan and the document signed by complainant Sabayle which later turned out to be an Absolute Deed of Sale, were notarized by respondent Carmelito B. Gabor.

- Six (6) months after his order releasing Mr. Pedro Lim as bondsman under the Supersedeas Bond, Judge Tandayag set aside his order, upon Motion for Reconsideration of the Sebuas, principally because of a circular issued by the Secretary of Justice cancelling the authority of Manhattan to issue surety bonds in court proceedings. Judge Tandayag reinstated the Supersedeas Bond set up by Mr. Pedro Lim.

- The complainant then discovered that the document he had signed was an Absolute Deed of Sale purportedly transferring ownership of a parcel of land owned by Sabayle in favor of Mr. Teopisto Salcedo, Manager of Manhattan. It also appeared that respondent Carmelito B. Gabor had subsequently purchased from Mr. Teopisto Salcedo one-half (1/2) of the piece of land purportedly acquired by Mr. Salcedo from complainant Sabayle.

- Complainant Sabayle thereupon commenced before the Court of First Instance of Lanao del Norte Civil Case No. II-102 (1403) against Mr. Teopisto Salcedo, respondent Carmelito B. Gabor and the Iligan City Register of Deeds for annulment of the Absolute Deed of Sale. During the pendency of this Civil Case for annulment, complainant Sabayle and Mr. Teopisto Salcedo entered into a Compromise Agreement dated 25 May 1973. In this Agreement, Mr. Salcedo admitted "that the Absolute Deed of Sale acknowledged before Notary Public Carmelito B. Gabor was absolutely simulated or fictitious", the supposed purchase price never having been paid by Mr. Salcedo to the complainant and the parties never having intended to enter into such contract of sale, and that Mr. Salcedo had never taken possession of the land referred to in the Deed of Sale. Mr. Salcedo admitted, further, that complainant was "owner in fee simple and the actual possessor" of the land described in the Absolute Deed of Sale. The Compromise Agreement was approved by the court which then rendered, on 5 November 1975, a decision which declared: (1) the Absolute Deed of Sale dated 26 October 1967 allegedly executed by Sabayle in favor of Teopisto Salcedo and notarized by Carmelito B. Gabor; and (2) the Deed of Sale allegedly executed by Teopisto Salcedo in favor of Carmelito B. Gabor and notarized by Melvin Salise, as null and void, and complainant Sabayle to be the owner of the land involved. The court also ordered Carmelito B. Gabor to pay Sabayle P1,000.00 as attorney's fees and expenses of litigation.

- Complainant Sabayle had also filed a complaint for falsification of public document with the Office of the City Fiscal of Iligan City. This complaint was dismissed on the ground that the evidence adduced was not clear and convincing.

- Complainant Sabayle also filed with the Court of First Instance of Lanao del Norte administrative charges

against respondent Carmelito B. Gabor for serious misconduct, dishonesty, and acts unbecoming an Assistant Clerk of Court. The trial Judge recommended dropping of this administrative charge apparently upon the ground that the involvement of Atty. Carmelito B. Gabor in the transaction was not shown to have been "in his (official) capacity as Assistant Clerk of Court."

In his Report and Recommendation, the Solicitor General recommended dismissal of the charges against respondent deceased Pablo B. Badong as moot and academic. While these charges may well be regarded as moot and academic, we believe that in the present case, these may and should be disposed of on the merits. It was not the deceased's fault that these proceedings have taken such an inordinate amount of time to complete and his family is entitled to know the outcome.

Complainant Sabayle charged deceased respondent Pablo B. Badong with negligence in the performance of his professional duties as counsel of Sabayle, consisting of failure to file an Opposition to the Motion of bondsman Pedro Lim to be relieved from the effects of his supersedeas bond, and to appeal from the decision of the Court of Appeals in C.A. - G.R. No. 30302-R dated 5 May 1967. In his Answer, deceased respondent Badong explained that it was complainant Sabayle himself who had been interested in effecting the release of bondsman Pedro Lim, since Mr. Lim had merely accommodated Sabayle and since Mr. Lim wished to sell his piece of land, the title of which had been annotated with a lien by reason of the supersedeas bond.[1] Mr. Badong, further, explained in his Answer that he had been retained by complainant Sabayle after the Court of Appeals had already rendered judgment affirming the decision of the trial court and that he was unable to appeal the decision of the Court of Appeals to this Court because Sabayle did not have complete records of his case, in particular, the appellant's Brief and the Record on Appeal filed before the Court of Appeals. Respondent Badong had requested the Court of Appeals to allow him to borrow or withdraw a copy of the Record on Appeal and the appellant's Brief on file with the Court of Appeals but the Court of Appeals denied his Motion as well as his Motion for a rehearing or reconsideration of the decision of the Court of Appeals. Finally, in his Answer, respondent Badong also urged as a countercharge against complainant Sabayle that the latter be punished for contempt of court for deliberate falsehood and perjury.

The record also shows that on 11 October 1973, complainant Sabayle and deceased respondent Badong filed with the Office of the Solicitor General a "Joint Motion to Dismiss charges as against Atty. Pablo B. Badong only, etc." dated 5 October 1973. This Joint Motion stated, in relevant part:

"1.

That complainant impleaded respondent Atty. Pablo B. Badong due entirely to some misapprehension of facts and premises; complainant thought then that his said former counsel in Civil Case No. IL-43, C.A.-G.R. No. 30302-R did nothing to advance and protect his interest in said case; but now, after careful examination of the record and deliberate consideration of the premises, complainant is sufficiently convinced and abundantly persuaded that the said respondent was not remiss in the discharge of his professional duties to me and that he did in fact try his best as a lawyer, to protect my interest;

2.

That accordingly, I do not find any bases for further prosecuting my said administrative charges against Atty. Pablo B. Badong; that I stand satisfied with the services he had rendered; and I affirm my faith and confidence in him as a lawyer and a member of the Bar, and as an officer of this Court; and that he had not been remiss in the discharge of his trust as a member of the legal profession;

3.

That in his Answer to the Complaint in the above entitled case, on the other hand, the said respondent Atty. Pablo B. Badong pressed counter-charges against the above-named complainant; with the spirit of mutual respect and amity restored between him and the complainant, for the sake of community peace and better understanding, the said respondent is no longer interested in the further prosecution of the said counter-charges and asks that the same be, also, dropped;

x x x x x x x x."

(Emphases supplied)

The movants, accordingly, prayed that the administrative charges against respondent Badong be dismissed or recommended for dismissal by this Court and that Badong's countercharges against complainant Sabayle be similarly dismissed.

The above Joint Motion was, however, dismissed by Solicitor Celso P. Ylagan in an order dated 27 March 1974, upon the ground that "settlement with a client on the basis satisfactory to him does not preclude inquiries into the moral and professional quality of an attorney's acts prior to or in connection therewith (People vs. Chamberline, 242 I11. 260). The Court will not permit matters affecting the character of its officers to be settled by private agreement (In Re: 9 L.T. Reports N.S. 299)."

We note that the order of Solicitor Ylagan did not purport to rule on the factual or non-factual character of the statements made in the Joint Motion to Dismiss Charges. Indeed, Solicitor Ylagan appears to have issued his order of dismissal because the administrative case was then still under investigation, certainly as against respondent Carmelito B. Gabor. Upon the other hand, the Court notes that the City Fiscal of Iligan City had concluded in his report to the Solicitor General dated 23 January 1984 that:

"Examining, however, the answer filed by Atty. Badong together with his several annexes therein we can conclude that Atty. Badong was not negligent at all in the handling of complainant's case before the Honorable Court of Appeals. In fact, Atty. Badong has exhausted all the limits available under the Rules of Court for the case of complainant. This is supported by all the pleadings he has filed before the Honorable Court of Appeals in Civil Case No. IL-43, entitled "Lucas Sebua v. Ambrosio Sabayle". (Emphases supplied)

After careful examination of the records of this case, the Court agrees with the above evaluation of Iligan City Fiscal Dominador Padilla. Complainant Sabayle had in fact retracted his charges against deceased respondent Badong and admitted that he (Sabayle) had been mistaken in his charges.

Turning to the charges against respondent Carmelito B. Gabor, the Solicitor General found that:

"Respondent indeed was guilty of Misconduct in violation of his oath as a member of the bar.

The Decision of the Trial Court in Civil Case No. II-102 for Annulment of a Deed of Sale (Annex D) is a mute but highly credible evidence that the Deed of Sale executed by complainant with Mr. Teopisto Salcedo is truly simulated and fictitious, for lack of consent and consideration. The Decision shows that respondent Gabor never attended any of the hearings of the case. Neither did he present evidence. On top of these, he did not appeal the Decision, indicating his agreement with the Court's findings.

x x x x x x x x

The Trial Court, in its Decision in Civil Case No. II-102, for Annulment of a Deed of Sale, found:

'It having been established that the deed of sale allegedly executed by the plaintiff in favor of the defendant Salcedo is truly simulated and fictitious for lack of consent and consideration and, null and void, it necessarily follows that the defendant Teopisto Salcedo never became the owner of the property mentioned in the deed of sale. Neither did he acquire any right thereto from the execution of this fictitious deed of sale. As a

consequence, the defendant Salcedo had nothing to transfer to the other defendant Carmelito Gabor when he in turn executed the deed of sale in the latter's favor. The defendant Carmelito Gabor, therefore, on his part cannot claim any right arising from this document allegedly executed in his favor by the defendant Salcedo. This is more accentuated by the fact that he never came into the possession of this property allegedly sold to him which is very clear in its significance. It further proves that the deed of sale executed between him and Salcedo, like the first deed of sale admitted by Salcedo to be simulated and fictitious, is also simulated and fictitious.' (p. VII, Decision, Nov. 5, 1975, Annex "D").

Respondent does not deny that he notarized the disputed Deed of Sale, but claims that complainant and his wife were present when he ratified the document.

The finding of the Trial Court, however, that the Deed of Sale is fictitious gives credence to the charge that respondent ratified the document in the absence of complainant and his wife, which, needless to say, constitutes censurable conduct.

In the same vein, we do not agree with respondent's defense that he did not participate in the preparation of the fictitious Deed of Sale.

A lawyer, who through negligence fails to discover the falsity of a document which he uses in connection with the performance of his functions may be dealt with administratively for failure to exercise care, notwithstanding lack of intent on his part to deceive (*Berenguer vs. Carranza*, G.R. Adm. Case No. 716, Jan., 1969, 26 SCRA 673).

Here, not only did respondent know of the fictitious sale between complainant and Mr. Teopisto Salcedo, so that the latter did not have any right to transfer to him a portion of the land, respondent also maliciously participated in the Deed of Sale purportedly transferring to him one-half of the property for sufficient consideration. Such conduct, constitutes willful disregard of his solemn duty as an attorney to act at all times in a manner consistent with truth and honor." (Emphases supplied)

We agree with the findings of the Solicitor General in respect of respondent Carmelito B. Gabor. A lawyer who knowingly takes part in a false and simulated transaction not only by notarizing a simulated Deed of Sale but also by sharing in the profits flowing from defrauding of the victim through such transaction by acquiring half of the property sought to be transferred by the false transaction, is guilty of serious dishonesty and professional misconduct. There is a strong public interest involved in requiring lawyers who, as officers of the courts, participate in the dispensation of justice to behave at all times in a manner consistent with truth and honor. It is important that the common caricature that lawyers by and large do not feel compelled to speak the truth and to act honestly, should not become common reality. It is equally important that lawyers not be allowed to profit from their own dishonest acts. This injunction is of particular importance for Notaries Public who are authorized by law to convert private writings into public instruments and to warrant the genuineness and voluntariness of such instruments by acknowledging them.

In *In re Del Rosario*,^[2] Mr. Justice Malcolm stressed the standards required from members of the legal profession:

"... The practice of the law is not an absolute right to be granted every one who demands it, but is a privilege to be extended or withheld in the exercise of a sound discretion. The standards of the legal profession are not satisfied by conduct which merely enables one to escape the penalties of the criminal law. It would be a disgrace to the Judiciary to receive one whose integrity is questionable as an officer of the court, to clothe him with all the prestige of its confidence, and then to permit him to hold himself out as a duly authorized member of the bar. (*In re Terrell* [1903], 2 Phil., 266; *People ex rel. Colorado Bar Association vs. Thomas* [1906], 36 Colo., 126; 10 Ann. Cas., 886 and note; *People vs. Macauley* [1907], 230 Ill., 208; *Ex parte Wall* [1882], 107 U.S., 265.)."^[3]

ACCORDINGLY, the Court Resolved to DISMISS the charges against deceased respondent Pablo B. Badong as moot and academic and for lack of merit. Let a copy of this Resolution be furnished to the family of the deceased respondent Pablo B. Badong.

The Court, further, resolved to DISBAR respondent Carmelito B. Gabor and to STRIKE his name from the Roll of Attorneys and to REQUIRE him to surrender his Attorney's Certificate to the Clerk of this Court forthwith. This Resolution is immediately executory.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

[1] Verified Answer of Pablo B. Badong, Rollo, p. 48.

[2] 52 Phil. 399 [1928].

[3] 52 Phil. at 400-401.

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