

BUHANGIN RESIDENTS AND EMPLOYEES ASSOCIATION FOR DEVELOPMENT, INC. (BREAD), ETC. COMPLAINANTS, VS. ATTY. CORAZON NUÑEZ-MALANYAON, RESPONDENT.

A.C. No. 4244. June 17, 1997

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

A petition for disbarment dated May 2, 1994 was filed against Atty. Corazon Nuñez-Malanyaon by Arturo S. Asumbrado, as President and in representation of the Buhangin Residents And Employees Association For Development, Inc. (BREAD, registered with the Securities and Exchange Commission on February 6, 1990). The petition accuses Atty. Malanyaon of criminal falsification for having prepared and notarized two (2) irreconcilably inconsistent public instruments -- (2) deeds of sale covering titled parcels of land in Buhangin, Davao City, with a total area of about 6.0475 hectares, which she caused to be executed by the registered owners: one for the consideration of P535,400.00; and the other, for P4,535,400.00, both deeds bearing the same entry in her notarial register, viz.: Doc. No. 310, Book No. VI, Page No. 62, Series of 1990.

The Court required Atty. Malanyaon to comment on the complaint. In the comment which she filed in due course, she admits that two (2) deeds of sale were actually prepared but denies, upon the facts detailed by her, that there was anything irregular or illegal in those acts. There followed an exchange of pleadings by the parties: complainant's "Reply to Comment" dated January 18, 1996, the "Rejoinder to Respondent's Reply to Comment" dated September 5, 1996, the "Traverse to Rejoinder to Respondent's Reply to Comment" dated October 26, 1996.

By Resolution dated October 7, 1996 the Court ordered:

- a) "BREAD's president, Arturo S. Asumbrado, to submit to the Bar Confidant authentic copies of BREAD's contracts and written transactions (including particularly, the loan agreement and/or promissory note, the mortgage deed, demand letters, notice of foreclosure, etc.) with the National Home Mortgage and Financing Corporation (NHMFC) and/or the Community Organizing Davao Experience (CODE) Foundation relative to the subject matter of the case at bar, within ten (10) days from notice **," and
- b) respondent attorney similarly to submit to the Bar Confidant such of the documents just specified as may be available to her, also within ten (10) days from notice of this Resolution."

After some delay, caused by unavoidable circumstances, the following documents were submitted by BREAD's counsel, Atty. Martin B. Delgra III:

(Submitted on November 18, 1996:)

- 1) the duplicate original of the Notice of Extra-Judicial Sale dated December 28, 1993 issued by Sheriff (Clerk of Court) of Davao City, entitled "National Home Mortgage Finance Corporation, Mortgagee vs. Buhangin Residents and Employees Association, Inc., Mortgagor, EJP REM Case No. 2331;" and

2) an authenticated copy of the Real Estate Mortgage executed by and between Buhangin Residents and Employees Association, Inc., and Community Organizing Davao Experience (CODE) Foundation, having reference to a loan agreement dated May 3, 1990 in the amount of P4,535,400.00 (Doc. 315, Page No. 63, Book No. VI, Series of 1990).

(Submitted on March 3, 1997:)

3) a certified true copy of the LETTER-GUARANTY dated April 27, 1990, signed by the President of the National Home Mortgage Finance Corporation (NHMFC), Ramon Albert, and conformed to by the owners of the two lots subject of the deeds of sale in question -- Cherinita B. Rodriguez and Isagani B. Rodriguez, represented by their attorney-in-fact, Cynthia R. Dacanay -- in which NHMFC guarantees the payment of P4,535,400.00 to the latter, as the purchase price of said parcels of land with the reciprocal obligation on the part of the landowners to execute the necessary deed of sale for the same amount in favor of BREAD, within thirty (30) days from submission to NHMFC of the titles by another agency (CODE) free from all liens except the mortgage in the latter's favor;

4) another certified true copy (SEE Item No. 2, above) of the REAL ESTATE MORTGAGE dated May 2, 1990 executed by and between BREAD (represented by its President, Asumbrado) and CODE Foundation (represented by its Executive Director, Favio D. Sayson), notarized by Atty. Malanyaon, having reference to a loan agreement dated May 3, 1990 in the amount of P4,535,400.00 (Doc. 315, Page No. 63, Book No. VI, Series of 1990); and

5) a certified true copy of the LOAN AGREEMENT dated March 9, 1990, executed by and between CODE Foundation, Inc. (represented by its aforementioned Executive Director, Favio D. Sayson) and BREAD (represented by Arturo Asumbrado), notarized by Atty. Lucilo V. Pucot on March 26, 1990 (Doc. No. 272, Page No. 55, Book No. 26, Series of 1990).

From this documents, and the parties' pleadings which for the most part raise no issue as to the essential antecedents, a fairly accurate reconstruction of the events leading to the execution of the deeds claimed by BREAD to be spurious may be made without too much difficulty.

There is no dispute about the fact that Cherinita B. Rodriguez and Isagani B. Rodriguez, Jr. were the owners of the two (2) parcels of land involved in this case. They had purchased the lots from co-owners (the Castañedas) for investment purposes: for a possible joint venture with an experienced developer who would convert the same into a residential subdivision. In fact, they had already had initial talks with HLC Construction, Inc. in this connection. According to Asumbrado, the deed of sale was executed in the Rodriguezes' favor on October 28, 1989 but was not registered until March 7, 1990, at which time titles were issued in their names.

Neither is there a dispute about the fact that negotiations were subsequently had between the Rodriguezes and BREAD concerning the land. It appears that BREAD approached the Rodriguezes and offered to buy the land for subdivision into smaller lots which it planned thereafter to distribute to its members, who allegedly were "spillovers" from another community association (AWHAG) based in Bacaca, Davao City, as well as others who had no home lots of their own. BREAD suggested that the Rodriguezes make an offer to sell in writing.

The Rodriguezes did make an offer to BREAD -- and another non-governmental corporation named CODE (Community Organizing Davao Experience) Foundation, which was assisting BREAD in its organization. In the offer, the Rodriguezes set out full details as to land area, location, and price, etc. Asumbrado adds that the Rodriguezes' written offer was made through their attorney-in-fact, Ms. Cynthia Rodriguez-Dacanay; that the price was fixed at P4,535,400.00; that said offer was accepted by CODE's Project Director, Favio Sayson, by letter dated January 25, 1990; and that Atty. Malanyaon is a member of CODE's Board of Trustees. Asumbrado also points out that actually, his organization, BREAD, had been established on the initiative of CODE

Foundation, membership being “taken from CODE’s spillover interested applicants under the Land Acquisition Program for the Urban Poor,” and BREAD having been “organized as a non-stock corporation under the direct control and supervision of CODE Foundation, Inc.”

It further appears that BREAD and CODE proposed that BREAD would purchase the properties from the Rodriguezes at the price of P4,535,400.00, an amount BREAD would borrow from a suitable financing institution, like the National Home Mortgage Finance Corporation (NHMFC); that since the properties would be used by BREAD as collateral, it was necessary for the titles to be placed in its name; that the Rodriguezes would also have to advance the amount of P226,770.00 to pay for the capital gains tax (5% of the consideration of P4,535,400.00), as well as all registration fees incident to the sale (documentary stamps, transfer fees, etc.). Asumbrado says that key officers of CODE, on the one hand, and Ms. Dacanay (representing the Rodriguezes), on the other, discussed the matter with the National Home Mortgage Financing Corporation (NHMFC) under its so-called “Community Mortgage Program.”

After the Rodriguezes had consulted (1) their lawyer, Atty. Malanyaon, and (2) the Register of Deeds of Davao City, Atty. Aludia P. Gadia, and to reduce the expenses that would have to be initially borne by the Rodriguezes, the parties agreed on the following procedure:

- (1) the properties would be transferred to BREAD under a deed that would recite a consideration of only P535,400.00 (obviously to cut down on the cash outlay of the Rodriguezes (e.g., as regards capital gains tax, etc.);
- (2) the deed would be registered, with the RODRIGUEZES advancing the payment for capital gains tax, registration and other fees, and titles would be obtained in the name of BREAD;
- (3) BREAD would then negotiate for a loan to cover the actual purchase price of P4,535,400.00;
- (4) The proceeds of the loan of P4,535,400.00 would be paid to the Rodriguezes, who would thereupon
 - (a) deliver to BREAD another deed of sale regarding the same properties but setting forth the correct price of P4,535,400.00, and
 - (b) pay the additional capital gains tax and corresponding fees computed in accordance with said higher and correct price.

The procedure was followed to a point: the properties were transferred by the Rodriguezes to BREAD under a deed stating the price to be P535,400.00, on the strength of which new titles were issued over the same in favor of BREAD: TCTs Nos. T-151920 and T-151921; the properties were used as collateral for a loan obtained by bread from NHMFC; and from the loan proceeds the real purchase price of P4,535,400.00 was paid by BREAD to the Rodriguezes. Asumbrado adds that the sale to BREAD was registered on May 2, 1990 and titles were issued to it; and he acknowledges that the Rodriguezes paid P26,700.00 as capital gains tax as well as P5,360.00 for documentary stamps.

However, Malanyaon failed to cause cancellation of the deed of sale for P535,400.00 and its substitution with that for P4,535,400, in all the corresponding offices, or to attend to the payment of the additional fees entailed by the actual sale price. This was due, she says, to her “numerous official and unofficial workload as an accountant, a practicing lawyer, a City Councilor, and involvement in various civil and professional organizations.”

In the complaint by which he initiated the proceeding at bar, Asumbrado gives a different version of some of the facts. While he admits that the CODE Foundation was the “originator” in the Community Mortgage Program (CMP) with BREAD as beneficiary, and that it facilitated the preparation and finalization of the documents for the purchase of the parcels of land, he declares that the price agreed on was P535,400.00, not P4,535,400.00. While

also conceding that CODE did seek the assistance of the NHMFC to finance the housing project, and did assign the loan agreements between CODE and BREAD to NHMFC as second mortgagee, he asserts that “(u)nknown to BREAD,” CODE presented to NHMFC, in support of its request for loan assistance, the second deed of sale with the purchase price of P4,535,400.00, not that for P535,400.00. Consequently, the amount of P4,535,400.00 was released by NHMFC to the Rodriguezes.

Asumbrado further alleges that he was surprised to learn that another deed of sale, identical to the first, except for the price, which was P4,535,400.00, was submitted to the NHMFC and used as collateral for a loan in that same amount. He claims that because of this, despite BREAD’s “religious payment” of its obligations under what it supposed was its loan of only P535,400.00, the mortgage on the lands were foreclosed for non-payment of the loan of P4,535,400.00. The auction sale was in fact scheduled at 10 AM, February 18, 1994, in front of the Hall of Justice, Ecoland, Davao City.

On these posited premises, Asumbrado theorizes that Malanyaon is liable for falsification of a public document, resulting in prejudice to the members of BREAD who have to repay, under threat of foreclosure, a loan in an amount larger than that contemplated, for which she should be administratively sanctioned.

He also filed a complaint with the Office of the Ombudsman, apparently based on substantially the same essential factual averments, against Atty. Nuñez-Malanyaon and the officers of the CODE Foundation, docketed as Case No. OMB-MIN-02-0316. The complaint is for “Alleged Violation of R.A. 3019 and Falsification of Public Documents.” And in representation of BREAD, he also instituted on February 11, 1994 a civil action in Branch 16 of the Regional Trial Court of Davao City, docketed as Civil Case No. 22,658-94, against (1) CODE Foundation, (2) National Home Mortgage Finance Corporation (NHMFC), and (3) the Office of the Clerk of Court of the Regional Courts and Ex-Officio Sheriff of Davao City, for “Annulment of Real Estate Mortgage, Promissory Note, Loan Agreement, Deed of Assignment, etc.”

His bona fides in making these imputations is placed in very grave doubt by the very documents he has submitted to the Court in response to its command, which documents bear out, at the same time, Malanyaon’s version of the material occurrences. Asumbrado has been less than candid with the court in his narration of the facts. Patently false are his claims that the price agreed upon between BREAD and the Rodriguezes, as consideration for its acquisition of the parcels of land in question, was P535,400.00, not P4,535,400.00; and that he did not know and was in fact surprised to learn that it was the deed of sale with the price of P4,535,400.00, instead of that for P535,400.00, which was presented to NHMFC by CODE in consequence of which the loan proceeds in the amount of P4,535,400.00 were released by NHMFC to the Rodriguezes.

As early as March 9, 1990, when, in representation of BREAD, he signed the LOAN AGREEMENT between it and CODE Foundation, he already knew that the real value of the two parcels of land in question was P4,535,400.00, not P535,400.00 because said agreement explicitly stated that CODE would extend a loan to BREAD “in the principal sum of FOUR MILLION FIVE HUNDRED THIRTY-FIVE THOUSAND FOUR HUNDRED (P4,535,400) Philippine Currency,” the proceeds of which would “be exclusively used to finance the acquisition” of the Rodriguezes’ two (2) parcels of land. His knowledge of this value is confirmed by the deed of Real Estate Mortgage dated May 2, 1990 to which he was also a signatory, representing the mortgagor, BREAD, executed over the two (2) lots in question “to secure the obligations of *** (said) MORTGAGOR in favor of the MORTGAGEE (CODE Foundation) in the amount of FOUR MILLION FIVE HUNDRED THIRTY FIVE THOUSAND FOUR HUNDRED PESOS ONLY (P4,535,400.00) *** ” pursuant to the terms of the Loan Agreement between them. Such knowledge is evidenced, too, by the first Deed of Sale signed by him (Asumbrado) -- which exhibits no alteration on its face (Annex J), supra -- which instrument categorically sets out the price of P4,535,400.00.

Other documents on record convincingly prove that the value placed on the two (2) lots by the parties, BREAD, CODE, NHMFC, was really P4,535,400.00. One of these is the letter dated January 22, 1990 of Cynthia Rodriguez-Dacanay, attorney-in-fact of the original owners of the two (2) lots in question, addressed to the CODE Foundation, Inc. ("Attn.: Mr. Flavio Sayson, Project Director") containing the offer of said lots for sale at the price of P4,535,000.00, acceptance of which is indicated by the signature therein of CODE Project Director Flavio Sayson. This document (Annex H of BREAD's petition) illustrates the extreme implausibility of the owners later offering the same property to BREAD at a price of P535,400.00, lower by P4,000,000.00!

Then there is the Letter-Guaranty executed on April 27, 1990 by the National Home Mortgage Finance Corporation (NHMFC) through its President, Ramon A. Albert, which bears the conformity (conforme) of the Rodriguezes' Attorney-in-fact, Cynthia R. Dacanay (also submitted by Asumbrado's lawyer on March 3, 1997), which clearly substantiates the statements in the LOAN AGREEMENT above referred to. It affirms the obligation of the Rodriguezes to sell to BREAD the two parcels of land, and expresses NHMFC's undertaking to give to said sellers the sum of P4,535,400.00 -- representing the proceeds of a loan to be obtained by BREAD -- within 30 days from submission to it of BREAD's titles "free from all liens and encumbrances whatsoever except the mortgage to be annotated in favor of ** CODE Foundation."

Both these documents, the letter of Cynthia Rodriguez-Dacanay of January 22, 1990, and the Letter- Guaranty of April 27, 1990, expose the utterly preposterous character of Asumbrado's allegation that the Rodriguezes subsequently agreed to sell the lots for only P535,400.00 -- P4,000,000.00 less than their original, accepted offer.

Again, the two (2) deeds of sale of May 2, 1990 -- Annexes I and J of the petition -- demonstrate that Annex J, stating the price of P4,535,400.00, was the first to be executed. An examination of the deeds, identical in every respect except for the price, clearly shows that Annex I -- stating the price of P535,400.00 -- was copied from Annex J -- reciting the price of P4,535,400.00. It is clearly evident that the price written in words and figures in Annex J as "PESOS: FOUR MILLION FIVE HUNDRED THIRTY FIVE THOUSAND FOUR HUNDRED (P4,535,400) Philippine Currency" -- which appears on the barest scrutiny to be without correction of any sort whatever -- was erased, and substituted in Annex I, by another price, superimposed with the use of another typing machine, the new price being stated in words and figures as "PESOS: FIVE HUNDRED THIRTY FIVE THOUSAND FOUR HUNDRED PESOS ONLY (P535,400.00) Philippine Currency." The deeds also indicate that the sale contemplated by both NHMFC and CODE is that setting out the price of P4,535,400.00 (Annex J). Considered conjointly with the other documents, these documents also very strongly generate persuasion of Asumbrado's knowledge of the real value of the land.

Finally, the fact that evidently on the strength of the two (2) deeds of sale just mentioned, and on the same date, May 2, 1990, corresponding Transfer Certificates of Title were issued by the Register of Deeds of Davao City in favor of Asumbrado's organization, BREAD (Annexes C and D, petition); and the further fact, already mentioned, that the mortgage involving those same titles was executed on May 2, 1990 by Asumbrado (representing BREAD), and explicitly adverts to a loan agreement of P4,535,400.00 -- make well nigh conclusive the proposition that Asumbrado did indeed have full knowledge of the real value of the two (2) parcels of land in question, and constitute the final, and powerfully persuasive, confirmation of respondent Malanyaon's version of the material events.

The petition for disbarment is thus exposed as grounded on nothing but false and misleading allegations.

PREMISES CONSIDERED, the petition for disbarment dated May 2, 1994 is DISMISSED for utter lack of merit. The petitioner's President, ARTURO S. ASUMBRADO, is hereby ORDERED to show cause within fifteen (15) days from notice hereof, why he should not be punished for contempt for attempting to foist falsities upon the

Court and abuse of court processes.

SO ORDERED.

Davide, Jr., Melo, and Panganiban, JJ., concur.

Francisco, J., on leave.

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