

FLORENCIO A. SALADAGA, COMPLAINANT, VS. ATTY. ARTURO B. ASTORGA, RESPONDENT.*A.C. No. 4697. November 25, 2014*

Ponente: LEONARDO-DE CASTRO, J.

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Membership in the legal profession is a high personal privilege burdened with conditions,[1] including continuing fidelity to the law and constant possession of moral fitness. Lawyers, as guardians of the law, play a vital role in the preservation of society, and a consequent obligation of lawyers is to maintain the highest standards of ethical conduct.[2] Failure to live by the standards of the legal profession and to discharge the burden of the privilege conferred on one as a member of the bar warrant the suspension or revocation of that privilege.

The Factual Antecedents

Complainant Florencio A. Saladaga and respondent Atty. Arturo B. Astorga entered into a “Deed of Sale with Right to Repurchase” on December 2, 1981 where respondent sold (with right of repurchase) to complainant a parcel of coconut land located at Barangay Bunga, Baybay, Leyte covered by Transfer Certificate of Title (TCT) No. T-662 for P15,000.00. Under the said deed, respondent represented that he has “the perfect right to dispose as owner in fee simple” the subject property and that the said property is “free from all liens and encumbrances.”[3] The deed also provided that respondent, as vendor a retro, had two years within which to repurchase the property, and if not repurchased within the said period, “the parties shall renew [the] instrument/agreement.”[4]

Respondent failed to exercise his right of repurchase within the period provided in the deed, and no renewal of the contract was made even after complainant sent respondent a final demand dated May 10, 1984 for the latter to repurchase the property. Complainant remained in peaceful possession of the property until December 1989 when he received letters from the Rural Bank of Albura (Leyte), Inc. (RBAI) informing him that the property was mortgaged by respondent to RBAI, that the bank had subsequently foreclosed on the property, and that complainant should therefore vacate the property.[5]

Complainant was alarmed and made an investigation. He learned the following:

- (1) TCT No. T-662 was already cancelled by TCT No. T-3211 in the name of Philippine National Bank (PNB) as early as November 17, 1972 after foreclosure proceedings;
- (2) TCT No. T-3211 was cancelled by TCT No. T-7235 in the names of respondent and his wife on January 4, 1982 pursuant to a deed of sale dated March 27, 1979 between PNB and respondent;
- (3) Respondent mortgaged the subject property to RBAI on March 14, 1984, RBAI foreclosed on the property, and subsequently obtained TCT No. TP-10635 on March 27, 1991.[6]

Complainant was subsequently dispossessed of the property by RBAI.[7]

Aggrieved, complainant instituted a criminal complaint for estafa against respondent with the Office of the

Provincial Prosecutor of Leyte, docketed as I.S. No. 95-144. The Provincial Prosecutor of Leyte approved the Resolution[8] dated April 21, 1995 in I.S. No. 95-144 finding that “[t]he facts of [the] case are sufficient to engender a well-founded belief that Estafa x x x has been committed and that respondent herein is probably guilty thereof.”[9] Accordingly, an Information[10] dated January 8, 1996 was filed before the Municipal Trial Court (MTC) of Baybay, Leyte, formally charging respondent with the crime of estafa under Article 316, paragraphs 1 and 2 of the Revised Penal Code,[11] committed as follows:

On March 14, 1984, accused representing himself as the owner of a parcel of land known as Lot No. 7661 of the Baybay Cadastre, mortgaged the same to the Rural Bank of Albuera, Albuera, Leyte, within the jurisdiction of this Honorable Court, knowing fully well that the possessor and owner at that time was private complainant Florencio Saladaga by virtue of a Pacto de Retro Sale which accused executed in favor of private complainant on 2[nd] December, 1981, without first redeeming/repurchasing the same. [P]rivate complainant knowing of accused[’s] unlawful act only on or about the last week of February, 1991 when the rural bank dispossessed him of the property, the mortgage having been foreclosed, private complainant thereby suffered damages and was prejudiced by accused[’s] unlawful transaction and misrepresentation.

The aforementioned estafa case against respondent was docketed as Criminal Case No. 3112-A.

Complainant likewise instituted the instant administrative cases against respondent by filing before this Court an Affidavit-Complaint[12] dated January 28, 1997 and Supplemental Complaint[13] dated February 27, 1997, which were docketed as A.C. No. 4697 and A.C. No. 4728, respectively. In both complaints, complainant sought the disbarment of respondent.

The administrative cases were referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[14]

In his Consolidated Answer[15] dated August 16, 2003 filed before the IBP, respondent denied that his agreement with complainant was a pacto de retro sale. He claimed that it was an equitable mortgage and that, if only complainant rendered an accounting of his benefits from the produce of the land, the total amount would have exceeded P15,000.00.

Report and Recommendation of the Investigating Commissioner and Resolution of the IBP Board of Governors

In a Report and Recommendation[16] dated April 29, 2005, the Investigating Commissioner of the IBP’s Commission on Bar Discipline found that respondent was in bad faith when he dealt with complainant and executed the “Deed of Sale with Right to Repurchase” but later on claimed that the agreement was one of equitable mortgage. Respondent was also guilty of deceit or fraud when he represented in the “Deed of Sale with Right to Repurchase” dated December 2, 1981 that the property was covered by TCT No. T-662, even giving complainant the owner’s copy of the said certificate of title, when the said TCT had already been cancelled on November 17, 1972 by TCT No. T-3211 in the name of Philippine National Bank (PNB). Respondent made matters even worse, when he had TCT No. T-3211 cancelled with the issuance of TCT No. T-7235 under his and his wife’s name on January 4, 1982 without informing complainant. This was compounded by respondent’s subsequent mortgage of the property to RBAI, which led to the acquisition of the property by RBAI and the dispossession thereof of complainant. Thus, the Investigating Commissioner recommended that respondent be (1) suspended from the practice of law for one year, with warning that a similar misdeed in the future shall be dealt with more severity, and (2) ordered to return the sum of P15,000.00, the amount he received as consideration for the pacto de retro sale, with interest at the legal rate.

Considering respondent’s “commission of unlawful acts, especially crimes involving moral turpitude, acts of dishonesty, grossly immoral conduct and deceit,” the IBP Board of Governors adopted and approved the

Investigating Commissioner's Report and Recommendation with modification as follows: respondent is (1) suspended from the practice of law for two years, with warning that a similar misdeed in the future shall be dealt with more severity, and (2) ordered to return the sum of P15,000.00 received in consideration of the pacto de retro sale, with legal interest.[17]

The Court's Ruling

The Court agrees with the recommendation of the IBP Board of Governors to suspend respondent from the practice of law for two years, but it refrains from ordering respondent to return the P15,000.00 consideration, plus interest.

Respondent does not deny executing the "Deed of Sale with Right to Repurchase" dated December 2, 1981 in favor of complainant. However, respondent insists that the deed is not one of sale with pacto de retro, but one of equitable mortgage. Thus, respondent argues that he still had the legal right to mortgage the subject property to other persons. Respondent additionally asserts that complainant should render an accounting of the produce the latter had collected from the said property, which would already exceed the P15,000.00 consideration stated in the deed.

There is no merit in respondent's defense.

Regardless of whether the written contract between respondent and complainant is actually one of sale with pacto de retro or of equitable mortgage, respondent's actuations in his transaction with complainant, as well as in the present administrative cases, clearly show a disregard for the highest standards of legal proficiency, morality, honesty, integrity, and fair dealing required from lawyers, for which respondent should be held administratively liable.

When respondent was admitted to the legal profession, he took an oath where he undertook to "obey the laws," "do no falsehood," and "conduct [him]self as a lawyer according to the best of [his] knowledge and discretion." [18] He gravely violated his oath.

The Investigating Commissioner correctly found, and the IBP Board of Governors rightly agreed, that respondent caused the ambiguity or vagueness in the "Deed of Sale with Right to Repurchase" as he was the one who prepared or drafted the said instrument. Respondent could have simply denominated the instrument as a deed of mortgage and referred to himself and complainant as "mortgagor" and "mortgagee," respectively, rather than as "vendor a retro" and "vendee a retro." If only respondent had been more circumspect and careful in the drafting and preparation of the deed, then the controversy between him and complainant could have been avoided or, at the very least, easily resolved. His imprecise and misleading wording of the said deed on its face betrayed lack of legal competence on his part. He thereby fell short of his oath to "conduct [him]self as a lawyer according to the best of [his] knowledge and discretion."

More significantly, respondent transgressed the laws and the fundamental tenet of human relations as embodied in Article 19 of the Civil Code:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Respondent, as owner of the property, had the right to mortgage it to complainant but, as a lawyer, he should have seen to it that his agreement with complainant is embodied in an instrument that clearly expresses the intent of the contracting parties. A lawyer who drafts a contract must see to it that the agreement faithfully and clearly reflects the intention of the contracting parties. Otherwise, the respective rights and obligations of the contracting parties will be uncertain, which opens the door to legal disputes between the said parties. Indeed, the uncertainty caused

by respondent's poor formulation of the "Deed of Sale with Right to Repurchase" was a significant factor in the legal controversy between respondent and complainant. Such poor formulation reflects at the very least negatively on the legal competence of respondent.

Under Section 63 of the Land Registration Act,[19] the law in effect at the time the PNB acquired the subject property and obtained TCT No. T-3211 in its name in 1972, where a decree in favor of a purchaser who acquires mortgaged property in foreclosure proceedings becomes final, such purchaser becomes entitled to the issuance of a new certificate of title in his name and a memorandum thereof shall be "indorsed upon the mortgagor's original certificate." [20] TCT No. T-662, which respondent gave complainant when they entered into the "Deed of Sale with Right to Repurchase" dated December 2, 1981, does not bear such memorandum but only a memorandum on the mortgage of the property to PNB in 1963 and the subsequent amendment of the mortgage.

Respondent dealt with complainant with bad faith, falsehood, and deceit when he entered into the "Deed of Sale with Right to Repurchase" dated December 2, 1981 with the latter. He made it appear that the property was covered by TCT No. T-662 under his name, even giving complainant the owner's copy of the said certificate of title, when the truth is that the said TCT had already been cancelled some nine years earlier by TCT No. T-3211 in the name of PNB. He did not even care to correct the wrong statement in the deed when he was subsequently issued a new copy of TCT No. T-7235 on January 4, 1982,[21] or barely a month after the execution of the said deed. All told, respondent clearly committed an act of gross dishonesty and deceit against complainant.

Canon 1 and Rule 1.01 of the Code of Professional Responsibility provide:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Under Canon 1, a lawyer is not only mandated to personally obey the laws and the legal processes, he is moreover expected to inspire respect and obedience thereto. On the other hand, Rule 1.01 states the norm of conduct that is expected of all lawyers.[22]

Any act or omission that is contrary to, prohibited or unauthorized by, in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element.[23]

To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be untrustworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness. On the other hand, conduct that is "deceitful" means as follows:

[Having] the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. In order to be deceitful, the person must either have knowledge of the falsity or acted in reckless and conscious ignorance thereof, especially if the parties are not on equal terms, and was done with the intent that the aggrieved party act thereon, and the latter indeed acted in reliance of the false statement or deed in the manner contemplated to his injury.[24]

The actions of respondent in connection with the execution of the "Deed of Sale with Right to Repurchase" clearly fall within the concept of unlawful, dishonest, and deceitful conduct. They violate Article 19 of the Civil Code. They show a disregard for Section 63 of the Land Registration Act. They also reflect bad faith, dishonesty, and deceit on respondent's part. Thus, respondent deserves to be sanctioned.

Respondent's breach of his oath, violation of the laws, lack of good faith, and dishonesty are compounded by his

gross disregard of this Court's directives, as well as the orders of the IBP's Investigating Commissioner (who was acting as an agent of this Court pursuant to the Court's referral of these cases to the IBP for investigation, report and recommendation), which caused delay in the resolution of these administrative cases.

In particular, the Court required respondent to comment on complainant's Affidavit-Complaint in A.C. No. 4697 and Supplemental Complaint in A.C. No. 4728 on March 12, 1997 and June 25, 1997, respectively.[25] While he requested for several extensions of time within which to submit his comment, no such comment was submitted prompting the Court to require him in a Resolution dated February 4, 1998 to (1) show cause why he should not be disciplinarily dealt with or held in contempt for such failure, and (2) submit the consolidated comment.[26] Respondent neither showed cause why he should not be disciplinarily dealt with or held in contempt for such failure, nor submitted the consolidated comment.

When these cases were referred to the IBP and during the proceedings before the IBP's Investigating Commissioner, respondent was again required several times to submit his consolidated answer. He only complied on August 28, 2003, or more than six years after this Court originally required him to do so. The Investigating Commissioner also directed the parties to submit their respective position papers. Despite having been given several opportunities to submit the same, respondent did not file any position paper.[27]

Respondent's disregard of the directives of this Court and of the Investigating Commissioner, which caused undue delay in these administrative cases, contravenes the following provisions of the Code of Professional Responsibility:

CANON 11 – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

x x x x

CANON 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

x x x x

Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

Respondent's infractions are aggravated by the fact that he has already been imposed a disciplinary sanction before. In *Nuñez v. Atty. Astorga*,[28] respondent was held liable for conduct unbecoming an attorney for which he was fined P2,000.00.

Given the foregoing, the suspension of respondent from the practice of law for two years, as recommended by the IBP Board of Governors, is proper.

The Court, however, will not adopt the recommendation of the IBP to order respondent to return the sum of P15,000.00 he received from complainant under the "Deed of Sale with Right to Repurchase." This is a civil liability best determined and awarded in a civil case rather than the present administrative cases.

In *Roa v. Moreno*,[29] the Court pronounced that "[i]n disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other." While the respondent lawyer's wrongful

actuations may give rise at the same time to criminal, civil, and administrative liabilities, each must be determined in the appropriate case; and every case must be resolved in accordance with the facts and the law applicable and the quantum of proof required in each. Section 5,[30] in relation to Sections 1[31] and 2,[32] Rule 133 of the Rules of Court states that in administrative cases, such as the ones at bar, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[33]

The Court notes that based on the same factual antecedents as the present administrative cases, complainant instituted a criminal case for estafa against respondent, docketed as Criminal Case No. 3112-A, before the MTC. When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.[34] Unless the complainant waived the civil action, reserved the right to institute it separately, or instituted the civil action prior to the criminal action, then his civil action for the recovery of civil liability arising from the estafa committed by respondent is deemed instituted with Criminal Case No. 3112-A. The civil liability that complainant may recover in Criminal Case No. 3112-A includes restitution; reparation of the damage caused him; and/or indemnification for consequential damages,[35] which may already cover the P15,000.00 consideration complainant had paid for the subject property.

WHEREFORE, respondent is hereby found GUILTY of the following: breach of the Lawyer's Oath; unlawful, dishonest, and deceitful conduct; and disrespect for the Court and causing undue delay of these cases, for which he is SUSPENDED from the practice of law for a period of two (2) years, reckoned from receipt of this Decision, with WARNING that a similar misconduct in the future shall be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Court Administrator is directed to circulate this Decision to all courts in the country.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Leonen, and Jardeleza, JJ., concur.

Brion, J., on leave.

Perlas-Bernabe, J., on official leave.

[1] *Manzano v. Atty. Soriano*, 602 Phil. 419, 421 (2009).

[2] Preamble, 2nd paragraph, American Bar Association Model Code of Professional Responsibility (1983), cited in Code of Professional Responsibility (Annotated), p. 1.

[3] Joint Memorandum for complainant, rollo, Vol. III, pp. 173-205, 173-174, 192-193.

[4] *Id.* at 192-193.

[5] *Id.* at 174-175, 195-197.

[6] *Id.* at 175, 198-203.

[7] *Id.*, Vol. II, p. 67.

[8] Id. at 21-25.

[9] Id. at 24.

[10] Id. at 26.

[11] ART. 316. Other forms of swindling. – The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber, or mortgage the same;

2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded[.]

[12] Rollo, Vol. I, pp. 2-5.

[13] Id., Vol. II, pp. 1-7.

[14] Id., Vol. I, p. 51; Resolution dated February 14, 2000.

[15] Id., Vol. III, pp. 146-154.

[16] Id., Vol. II, pp. 52-69.

[17] Id. at 50-51, Notice of Resolution.

[18] The Lawyer's Oath states in full:

I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God. (Emphases supplied.)

[19] Act No. 496 enacted on November 6, 1902.

[20] Section 63 of the Land Registration Act provides:

Sec. 63. Mortgages of registered land may be foreclosed in the manner provided in the Code of Procedure in Civil Actions and Special Proceedings. A certified copy of the final decree of the court affirming the sale under foreclosure proceedings may be filed with the register of deeds after the time for appealing therefrom has expired, and the purchaser shall thereupon be entitled to the entry of a new certificate and to the issuance of a new owner's duplicate certificate, a memorandum thereof being at the same time likewise indorsed upon the mortgagor's original certificate and the mortgagee's duplicate, if any, being first delivered up and canceled: Provided, however, That nothing contained in this Act shall be construed to prevent the mortgagor or other person interested from directly impeaching by any proper legal proceedings any foreclosure proceedings affecting registered land, prior to the entry of a new certificate of title. (Emphasis supplied.)

[21] It appears from the annotations/memoranda at the back of TCT No. T-3211 that said certificate of title was cancelled by TCT No. T-7235 when the deed of sale dated March 27, 1979 between PNB and respondent was

registered with the Register of Deeds. Respondent, however, lost his owner's duplicate and was issued a new copy of such owner's duplicate on January 4, 1982. (Rollo, Vol. III, p. 200.)

[22] Code of Professional Responsibility (Annotated), pp. 1, 16.

[23] *Id.*, citing Black's Law Dictionary (6th ed.), p. 1536.

[24] *Id.* at 6-7.

[25] Rollo, Vol. I, p. 25, and Vol. II, p. 37, respectively.

[26] *Id.*, Vol. I, p. 40.

[27] *Id.*, Vol. III, pp. 222-224, Order dated January 24, 2005.

[28] 492 Phil. 450, 460 (2005).

[29] A.C. No. 8382, April 21, 2010, 618 SCRA 693, 700.

[30] SECTION 5. Substantial evidence. – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[31] SECTION 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[32] SECTION 2. Proof beyond reasonable doubt. – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[33] *Peña v. Paterno*, A.C. No. 4191, June 10, 2013, 698 SCRA 1, 12-13.

[34] Rule 111, Section 1(a) of the Revised Rules of Criminal Procedure.

[35] Articles 104 to 107 of the Revised Penal Code.

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