

SPOUSES JENELINE DONATO AND MARIO DONATO, COMPLAINANTS, VS. ATTY. ISAAH B. ASUNCION, SR., RESPONDENT.

A.C. No. 4914. March 03, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is a complaint for disbarment filed by spouses Jeneline and Mario Donato against Atty. Isaiah B. Asuncion, Sr.

The complaint alleges that on July 22, 1994, complainant spouses and respondent Atty. Asuncion, Sr. executed a Contract to Sell wherein the latter conveyed to the former his parcel of land with an area of 10,776 square meters (or 1.0776 hectare) situated at San Miguel, Pangasinan covered by Tax Declaration No. 34-12256. The parties agreed that the purchase price is in the amount of P187,500.00 payable by installments.

On December 20, 1994, after the complainants had paid the last installment, the parties executed a Deed of Absolute Sale. This document was prepared by respondent wherein he made it appear that the consideration is only P50,000.00 in order to reduce the amount of the corresponding capital gain tax.

More than two years later, or on January 10, 1997, the National Power Corporation (NAPOCOR) filed with the Regional Trial Court (RTC), Branch 46, Urdaneta, Pangasinan, an action for eminent domain, docketed as Civil Case No. U-6293. Among the parcels of land being expropriated was the lot purchased by complainants for which NAPOCOR was willing to pay P3,000,000.00.

Respondent then offered his legal services to complainants and demanded 12% of whatever amount they will receive from NAPOCOR.

When respondent learned that complainants intended to hire the services of another lawyer, he threatened them by filing with the RTC, Branch 45, Urdaneta, Pangasinan Civil Case No. U-6352 for reformation of instrument. In his complaint, he alleged that the contract executed by the parties is not a deed of sale but an equitable mortgage because the price of the lot (P50,000.00) stated in the contract is unusually inadequate compared to NAPOCOR's offer of P3,000,000.00.

The complaint further alleges that in filing Civil Case No. U-6352 for reformation of instrument, respondent "has dragged them to useless and expensive litigation." His act is "contrary to law and morality" which warrants his disbarment.

In his comment on the instant administrative complaint, respondent claimed that complainants violated the rule on forum shopping. According to him, the issue raised in this administrative complaint and in complainants' answer to his complaint in Civil Case No. U-6352 for reformation of instrument is the same, i.e., "the legality and morality" of the filing of this civil case.

In a Resolution dated February 7, 1998, we referred this case to the Integrated Bar of the Philippines (IBP) for

investigation, report and recommendation.

In her Report and Recommendation dated March 3, 2003, Atty. Rebecca Villanueva-Maala, IBP Hearing Commissioner, made the following findings:

“After a careful study and consideration of the facts and evidence presented, we find respondent to have committed gross misconduct. In the Civil Case No. U-6352 before the RTC, Branch 45, Urdaneta City, for Reformation of Instrument, respondent was not telling the truth when he alleged under paragraph 6 ‘That although the document is captioned Deed of Absolute Sale, the true intention of the parties is not expressed by reason of mistake on the part of the person who drafted the document, because the instrument should be equitable mortgage x x x.’ Between the complainants and the respondent, it is the latter who knows about the law, be it the difference between a Deed of Absolute Sale and an Equitable Mortgage. And because he is the lawyer and he has a law office together with his son, it is presumed that he was the one who prepared the Deed of Absolute Sale wherein the consideration indicated was only P50,000.00. We believed complainants that the Deed of Absolute Sale was prepared by respondent to lessen the amount of capital gain tax. Respondent cannot deny that he was the one who prepared the Deed of Absolute Sale as shown by his letters to Myrna Tugawin (sister of Jeneline Donato) dated 31 August 1994, 1 September 1994 and 20 December 1994. After the lapse of several years, respondent filed the complaint for Reformation of Instrument because he realized that the price paid to him by complainants was unusually inadequate in view of the fact that the same land was being purchased by NAPOCOR for P3,000,000.00.

“The contention of respondent that this administrative complaint is a violation of the rule on ‘forum shopping’ is without merit. There is ‘forum shopping’ when as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another (First Phil International Bank vs. CA, 252 SCRA 259), or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition (Chemphil Export & Improt Corp. vs. CA, 251 SCRA 257).”

and recommended that complainant be suspended from the practice of law for one (1) year.

In its Resolution No. XV-2003-345, the IBP Board of Governors adopted and approved the Report of Commissioner Maala with the recommendation that respondent be suspended from the practice of law for only six (6) months.

We sustain the finding of the Hearing Commissioner that respondent was not telling the truth when he alleged in his complaint for reformation of instrument that the intention of the parties is not expressed therein; that what they intended to execute was a deed of equitable mortgage, not a deed of absolute sale; and that the mistake was committed by the person who drafted the instrument.

We observe that the Deed of Absolute Sale was executed by the parties on December 14, 1994. However, respondent filed Civil Case No. U-6352 for reformation of instrument only on April 23, 1997, or after two years, four months and nine days. Why did it take him more than two years to realize that the previous contract did not express the true intention of the parties? The reason for this delay can be gleaned from the allegations in his complaint in Civil Case No. U-6352 for reformation of instrument. He alleged that the Deed of Absolute Sale should have been an equitable mortgage since the consideration stated therein is only P50,000.00, while the NAPOCOR has agreed to purchase the lot for P3,000,000.00. It is thus clear that it was only when he knew that the value of the lot suddenly increased by leaps and bounds that he thought of filing the complaint for reformation of instrument.

At this point, it bears stressing that respondent does not dispute complainants’ contention that they paid him P187,500.00, not P50,000.00. As earlier mentioned, complainants explained that the latter price was specified in

the deed of absolute sale in order to reduce the amount of the corresponding capital gain tax.

We likewise sustain the finding of Commissioner Maala that the Deed of Absolute Sale was prepared by respondent himself, as shown by his letters to Myrna Tugawin, sister of complainant Jeneline Donato. In his letter dated August 31, 1994, respondent informed Myrna that “a Deed of Sale will be executed by us” (referring to him and the complainants). In his letter of September 1, 1994, respondent asked Myrna to bring P50,000.00 on September 3, 1994 “for the execution of the Deed of Absolute Sale.” And in his letter dated December 20, 1994, respondent requested Myrna to bring complainants’ “balance” on December 22, 1994. If it were true that the contract between the parties is an equitable mortgage, why did he prepare a different one – a Deed of Absolute Sale?

We find respondent guilty of gross misconduct.

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.[1] Section 27, Rule 138 of the Revised Rules of Court mandates:

“SEC. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

x x x.”

In SPO2 Jose B. Yap vs. Judge Aquilino A. Inopiquez, Jr.,[2] we explained the concept of gross misconduct as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent.

In committing such gross misconduct, respondent violated his solemn oath as a lawyer imposing upon himself the following duties, thus:

“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 obligation without any mental reservation or purpose of evasion. So help me God.”

By filing the unfounded complaint for reformation of instrument to obtain financial gain, respondent did not only abuse and misuse the judicial processes, but likewise harassed the complainants and forced them to litigate unnecessarily. Indeed, his act was intended to advance his own interest at the expense of truth and the administration of justice, a manifestation of flaw in his character as a lawyer.

The practice of law is a sacred and noble profession. It is a special privilege bestowed only upon those who are competent intellectually, academically and morally.[3] We have been exacting in our demand for integrity and good moral character of members of the Bar.[4] We expect them at all times to uphold the integrity and dignity of the legal profession[5] and refrain from any act or omission which might lessen the trust and confidence reposed

by the public in the integrity of the legal profession.[6]

Any gross misconduct of a lawyer in his profession or private capacity is a ground for the imposition of the penalty of suspension or disbarment because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege.[7] We agree with the IBP Board of Governors that respondent should be suspended from the practice of law for six (6) months for gross misconduct.

Incidentally, respondent's defense of forum shopping is utterly bereft of merit. Suffice it to state that complainants did not institute two actions grounded on the same cause of action on the supposition that one or the other court might look with favor upon them.

WHEREFORE, respondent ATTY. ISAAH B. ASUNCION, SR. is found GUILTY of GROSS MISCONDUCT and is hereby SUSPENDED from the practice of law for a period of SIX (6) MONTHS effective from notice.

Let a copy of this Decision be entered in the personal records of respondent as a member of the Bar; and be furnished the Bar Confidant, the IBP, and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] Re: Administrative Case No. 44 of the Regional Trial Court, Branch IV, Tagbilaran City, against Atty. Samuel C. Occeña, A.C. No. 2841, July 3, 2002, 383 SCRA 636, citing *Maligsa vs. Cabanting*, 272 SCRA 408 (1997); *Mabuhay vs. Garcia*, 330 SCRA 236 (2000).

[2] A.M. No. MTJ-02-1431, May 9, 2003, citing *Tan Tiac Chiong vs. Cosico*, A.M. No. CA-02-33, July 31 2002; *Canson vs. Garchitorena*, SB-99-9-J, July 28, 1999, 311 SCRA 268; *Black's Law Dictionary*, Fourth Ed. at 832, 1150; *Words and Phrases*, Vol. 27 at 466.

[3] Re: Administrative Case No. 44 of the Regional Trial Court, Branch IV, Tagbilaran City, against Atty. Samuel C. Occeña, *supra*.

[4] *Milagros N. Aldovino, et al. vs. Atty. Pedro C. Pujalte, Jr.*, A.C. No. 5082, February 9, 2004.

[5] *Sipin-Nabor vs. Bateria*, A.C. No. 4073, June 28, 2001, 360 SCRA 6; *Emiliana M. Eustaquio, et al. vs. Atty. Rex C. Rimorin*, A.C. No. 5081, March 24, 2003, citing *Tapucar vs. Tapucar*, 355 Phil 66, 74 (1998); *Felicitas vs. Atty. Wenceslao Barcelona*, A.C. No. 6084, September 3, 2003, citing *Businos vs. Ricafort*, 283 SCRA 407, 407 (1997); *Marcelo vs. Javier*, 214 SCRA 1, 12-13 (1992).

[6] *Honorio Manalang, et al. vs. Atty. Francisco F. Angeles*, A.C. No. 1558, March 10, 2003, citing *Maligsa vs. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 413.

[7] *Spouses Stevens and Nora Whitson vs. Atty. Juanito C. Atienza*, A.C. No. 4453, August 28, 2003, citing *Jesena vs. Oñasa*, 126 SCRA 385 (1983); *Selwyn F. Lao vs. Atty. Robert W. Medel*, A.C. No. 5916, July 1, 2003, citing *Dumadag vs. Lumaya*, 334 SCRA 513 (2000); *Arrieta vs. Llosa*, 346 SCRA 932 (1997); *NBI vs. Reyes*, 326 SCRA 109 (2000).

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