

MARIA CIELO B. SUZUKI, REPRESENTED BY HER SISTER MARIA TERESA B. GABUCO, COMPLAINANT, VS. ATTY. ERWIN L. TIAMSON, RESPONDENT.

A.C. No. 6542 (Formerly CBD Case No. 03-1053). September 30, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In an Administrative Complaint[1] dated January 7, 2003 filed with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), Maria Cielo B. Suzuki, represented by her sister, Maria Teresa B. Gabuco, charged Atty. Erwin L. Tiamson with fraud, dishonesty and misrepresentation and for violation of Canons 1 and 17 of the Code of Professional Responsibility.

Praying for the disbarment of herein respondent, complainant alleges that on August 31, 2002, she entered into contracts of sale and real estate mortgage with several persons, namely Arthur Tumilty, Benjamin Commandante, Jr., Mark S. Commandante, and Mary Jane S. Commandante, wherein she bought from them a house and lot located at No. 2002, Purple Road, Camella Homes II, Talon 2, Las Piñas City, and covered by Transfer Certificate of Title (TCT) No. T-83217, issued by the Register of Deeds of Las Piñas City, and subsequently mortgaged the same property in favor of the sellers as security for the payment of the said property; the sale and mortgage transactions were facilitated by respondent who is the counsel of Mr. Tumilty; the sellers executed a Special Power of Attorney authorizing respondent as their attorney-in-fact and empowering him to receive payments from complainant; respondent received in behalf of the sellers the amount of P500,000.00 as partial consideration for the contract of sale; respondent committed to register the documents of sale and mortgage with the Register of Deeds of Las Piñas City but asked from and was given by complainant P80,000.00 as the latter's share in the expenses for registration; with the end in view of having the subject documents registered and the title to the property transferred in the name of complainant, respondent retained in his possession the subject deeds of absolute sale and mortgage as well as the owner's copy of the title; however, respondent never registered the said documents and did not cause the transfer of the title over the subject property in the name of complainant; respondent is guilty of fraud, misrepresentation, dishonesty and estafa which are grounds for his disbarment.[2]

In his Answer dated February 18, 2003, respondent denied the allegations of complainant. He put up affirmative defenses contending that sometime in August 2002, he was engaged by Mr. Tumilty, his friend and neighbor, to help him in the documentation of the sale of his house and lot to complainant; Mr. Tumilty informed respondent that he and the complainant agreed that the payment of the purchase price for the property shall be made through installment; respondent was also informed that complainant, at that time, was residing in Japan and that she was being represented by her agent, a certain Jenny Matira; when respondent communicated with Ms. Matira to discuss the documentation of the contract, the latter referred him to their lawyer, Atty. Lorenzo Tejada; respondent and Atty. Tejada met and subsequently arrived at a compromise wherein it was agreed that complainant will execute a promissory note in favor of Mr. Tumilty covering her obligation under the contract of sale; thereafter, Mr. Tumilty will execute a deed of sale in favor of complainant; complainant, in turn, will execute

a real estate mortgage contract in favor of Mr. Tumilty as security for the payment of her obligation; it was further agreed that after the new TCT in the name of complainant is released, the latter shall execute another contract of real estate mortgage covering the same property; subsequently, the above-mentioned documents were executed with the exception of the second real estate mortgage contract; respondent admits having received P250,000.00 in cash and P250,000.00 in check from the representatives of complainant but he does not admit that this is part of the partial payment for the real property sold; instead, he contends that the said amount was part of an internal agreement between complainant and a certain Ms. Suzuki, who is her agent's mother-in-law residing in Japan; respondent also admits receipt of P80,000.00 as complainant's share in the expenses for registration; respondent contends that immediately after the sale, he submitted the sale documents to the Bureau of Internal Revenue (BIR) and paid the capital gains tax, documentary stamp tax and other taxes which enabled him to get from the BIR a Certificate Authorizing Registration (CAR); sometime in September 2002, representatives of complainant approached respondent asking him to give them the new TCT covering the subject property in the name of complainant; respondent informed them that the transfer of the property in complainant's name is still being processed and even if respondent secures a new TCT in the name of complainant, he cannot give complainant the owner's duplicate copy until and unless the purchase price for the subject property has been fully paid and the real estate mortgage cancelled; several days after, the same persons returned to respondent's office and insisted on getting the owner's duplicate copy of the new TCT but respondent refused for the same reasons mentioned above; nonetheless, respondent handed to herein complainant's representative Gabuco the documents evidencing the sale, real estate mortgage, a special power of attorney dated August 31, 2002 as well as the keys to the house subject of the sale; respondent was later informed by complainant's agent, Jenny Matira that she is now unsure if complainant will execute a new real estate mortgage contract much less pay the remaining balance of the purchase price; sometime in October 2002, respondent received a letter from a certain Atty. Federico Ricafort demanding rescission of the sale with damages on the ground that he defrauded complainant; respondent was also asked to release the owner's copy of the new TCT; as a consequence, respondent deferred the processing of a new title over the subject property in the name of complainant because he has no longer any assurance that complainant will comply with her obligation to pay the remaining balance of the purchase price; respondent contends that he is merely performing his duty to protect the interest of his client by refusing to register the contract of sale with the Register of Deeds of Las Piiñas.[3]

Complainant filed her Reply to respondent's Comment contending that she was not, in fact, represented by a lawyer during the transaction and documentation of the subject contracts of sale and real estate mortgage; the partial payments she made in the amount of P1,352,500.00 were not deducted and reflected in the deeds of sale and mortgage; respondent does not acknowledge these payments and insists on the payment of the original purchase price of P2,150,000.00.[4]

In an order dated February 10, 2004, Commissioner Lydia A. Navarro of the IBP-CBD required the parties to submit their respective verified position papers attaching thereto documentary evidence and duly verified affidavits of witnesses, if any, after which the case shall be submitted for resolution.[5]

Complainant and respondent submitted their Position Papers, respectively.[6] Both parties also submitted their Reply to the opposing party's Position Paper.[7]

In her Report and Recommendation dated March 18, 2004, Commissioner Navarro found that respondent has no intention of defrauding complainant; instead, he is only performing his duty of protecting his client's interest when he held in abeyance the processing of the papers for the transfer of the title over the property in complainant's name. Consequently, Commissioner Navarro recommended the dismissal of the complaint against respondent.[8]

On June 26, 2004, the Board of Governors of the IBP passed Resolution No. XVI-2004-260 finding the

recommendation of Commissioner Navarro fully supported by evidence on record and the applicable laws and rules and, considering that the complaint lacks merit, resolved to adopt and approve the Report and Recommendation of Commissioner Navarro.[9]

On October 6, 2004, this Court issued a Resolution which noted Resolution No. XVI-2004-260 of the Board of Governors of the IBP and considered the instant case closed and terminated.[10]

On September 8, 2004, complainant filed a Motion for Reconsideration of IBP Resolution No. XVI-2004-260.

In its Resolution dated October 7, 2004, the IBP Board of Governors denied complainant's motion for reconsideration on the ground that the Board has no more jurisdiction to consider and resolve said motion as it has already endorsed the case to this Court.[11]

On March 30, 2005, this Court issued another Resolution requiring respondent to file his Comment on complainant's motion for reconsideration.[12] Respondent filed his comment on May 3, 2005.[13]

The issue in the present case is whether respondent is guilty of fraud, misrepresentation and dishonesty or of any improper act or conduct which violates his sworn duty as a lawyer in connection with his dealings with herein complainant or with any of the latter's representatives relative to the sale of the subject properties.

Complainant contends that respondent is guilty of dishonesty and misconduct for two main reasons. First, despite having received the amount of P80,000.00 from complainant as the latter's share in the registration of the deed of sale of the subject property, respondent failed to register the same; worse, he did not pay the capital gains tax, documentary stamp tax and all other taxes or fees due thereon. Second, respondent does not want to recognize and deduct from the original purchase price the advance payments made by complainant amounting to more than P1,000,000.00.

As to the first charge, this Court notes that respondent has submitted a photocopy of a CAR issued by the BIR to prove that he already paid the capital gains tax and documentary stamp tax due on the sale of the subject property, amounting to a total sum of P177,980.83; and that the BIR had already authorized the concerned Register of Deeds to effect the transfer of the said property.[14]

However, despite such authority, respondent did not register the deed of sale over the subject property. Respondent asserts that his only motive in refusing to register the deed of sale is to protect the interest of his client. Nonetheless, this Court notes that his client's interest is amply protected by the real estate mortgage executed by complainant. In fact, contrary to what respondent insists, we see no need to execute anew a different mortgage contract after the title over the property has been transferred in the name of complainant since the original contract of mortgage contains provisions stating that said contract shall be annotated at the back of the new TCT covering the subject property which shall be issued in the name of complainant.[15] The same mortgage contract also states that it shall not be affected by the cancellation of the existing TCT in the name of Mr. Tumilty and the other co-owners.[16] We find these provisions as sufficient security to protect the interest of respondent's client.

Besides, respondent himself admitted that based on their agreement with complainant, the condition for the transfer of title over the subject property in the name of complainant is for the latter to execute a real estate mortgage and a promissory note.[17] Complainant had already complied with these conditions.[18] Hence, it is only fair and just that respondent register the deed of sale over the subject property and have the title to this property transferred in the name of complainant.

As to the second charge, complainant presented documents to prove her contention that respondent's client

received certain amounts from complainant which have been considered as partial payments for the subject properties sold. Except for the payment made in September 5, 2003,[19] all the other payments were given prior to the execution of the deed of sale on August 31, 2002.[20] Complainant contends that all the advance payments she made should have been credited in her favor by deducting the same from the purchase price agreed upon as appearing in the deeds of sale and mortgage.

In his Comment to complainant's motion for reconsideration of Resolution No. XVI-2004-260 of the IBP-CBD, respondent claims that the amount of P500,000.00 he received from complainant, as evidenced by Annex "D"[21] of the complaint, does not form part of the agreed purchase price for the subject properties and, therefore, should not be deducted therefrom.[22] Respondent contends that this amount (P500,000.00) was paid by complainant as part of an internal arrangement or agreement between her and a certain Milet Wakatsuki who appears to be her agent's mother-in-law residing in Japan.[23] As to the other amounts which complainant claims to have paid, respondent insists that he has no knowledge of these payments as evidence shows that these sums have been given directly to his client, Mr. Tumilty.

We are not fully convinced by respondent's explanations.

With respect to the photocopies of receipts for a total amount of P724,990.00, representative of the alleged partial payments of the purchase price for the subject property marked as Annexes "C-1," "C-2," "C-3," "D-1" and "D-2" of the complaint, we find that complainant failed to prove that respondent intervened or had knowledge of these payments as to render him liable for fraud, dishonesty or misrepresentation for his failure to deduct these payments from the deeds of sale and mortgage over the subject property. As stated earlier, all these payments, except that evidenced by Annex "C-1," were made prior to the execution of the deeds of sale and mortgage over the subject property. There is no showing that respondent had knowledge of these payments at the time of the execution of the deeds of sale and mortgage that could have prompted him to reflect these payments on the said deed. In addition, respondent was not the one who received these payments. Annexes "C-1," "C-2" and "C-3" show that the payments were received by Ms. Wakatsuki while Annexes "D-1" and "D-2" show that the sums of money were received by respondent's client, Mr. Tumilty. Moreover, Annexes "C-2" and "C-3" did not specifically state if the payments were indeed given as consideration for the subject property. Hence, respondent cannot be faulted if he refuses to consider the amounts of money evidenced by the above-cited documents as partial payments for the subject property.

However, as to the amount of P500,000.00, it is clear from the acknowledgment receipt marked as Annex "D" of the complaint that the sum of money was given to respondent as payment for the subject property. As stated earlier, respondent admits having received the money from complainant but claims that the said amount does not form part of the purchase price; instead, it was paid by complainant in consideration of her arrangement or agreement with Ms. Wakatsuki. However, respondent did not substantiate his allegation. He did not even explain or elaborate his assertion. If there is indeed an arrangement, what kind of arrangement was it? And if the arrangement is between complainant and Wakatsuki, why did respondent receive the money? There is no showing that he is authorized by Wakatsuki to act as her attorney. On the contrary, respondent received the money and he does not deny that he signed the acknowledgment receipt for and in behalf of his client, Mr. Tumilty. Hence, based on the evidence presented in the instant case, respondent's refusal to acknowledge complainant's payment of P500,000.00 as part of the purchase price for the subject property is simply not warranted.

Canon 19 of the Code of Professional Responsibility enjoins a lawyer to represent his client with zeal. However, the same Canon provides that a lawyer's performance of his duties towards his client must be within the bounds of the law. Rule 19.01 of the same Canon requires, among others, that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client. Canon 15, Rule 15.07 also obliges lawyers to impress upon

their clients compliance with the laws and the principle of fairness. To permit lawyers to resort to unscrupulous practices for the protection of the supposed rights of their clients is to defeat one of the purposes of the state – the administration of justice.[24] While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice.[25] Respondent failed to live up to this expectation.

Complainant prays for the disbarment of respondent. However, it must be stressed that disbarment is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution for only the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar.[26] Accordingly, disbarment should not be decreed where any punishment less severe – such as a reprimand, suspension, or fine – would accomplish the end desired.[27] Considering that there is no evidence to prove that respondent misappropriated the sum of P500,000.00 he received from complainant as partial payment for the subject property, as well as the P80,000.00 complainant gave him as her share in the expenses for the registration of the subject deed of sale, we find it fit to reprimand respondent for his acts of unfairly dealing with complainant.

Finally, it must be emphasized that the issues of whether or not complainant had indeed made payments amounting to an aggregate sum of P1,352,500.00; if these payments were made, whether they were intended as part of the purchase price for the subject property; and, whether these payments should be properly deducted from the original purchase price of P2,150,000.00, are matters that should be properly resolved in a judicial proceeding separate and distinct from the present case. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa.[28] In this light, we refer to this Court's ruling in *Berbano vs. Barcelona*,[29] citing *In re Almacen*,[30] where it was held that:

Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, [they are] in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. [They] may be initiated by the Court *motu proprio*. Public interest is [their] primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have prove[n] themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[31]

Hence, our only concern in the instant case is the determination of respondent's administrative liability and our findings herein should not in any way be treated as having any material bearing on any other judicial action which the parties may choose to file against each other.

WHEREFORE, respondent is hereby REPRIMANDED for violating Rule 19.01, Canon 19 of the Code of Professional Responsibility, with a WARNING that a commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

- [1] Rollo, p. 1.
- [2] Id., pp. 1-4.
- [3] Id., pp. 33-45.
- [4] Id., pp. 60-63.
- [5] Id., p. 79.
- [6] Id., pp. 86 and 113.
- [7] Id., pp. 150 and 156.
- [8] Id., p. 167.
- [9] Id., p. 166.
- [10] Id., p. 176.
- [11] Id., p. 177.
- [12] Id., p. 182.
- [13] Id., p. 183.
- [14] Annex "A" of Respondent's Answer, Rollo, p. 48.
- [15] Annex "A-1" of Complainant's Position Paper, Rollo, pp. 94-96.
- [16] Ibid.
- [17] Rollo, p. 36; Annex "B" of Respondent's Answer, Rollo, pp. 49-50.
- [18] Annex "E" of Respondent's Answer, Rollo, p. 56; Annex "B" of Complaint, Rollo, p. 16.
- [19] Annex "C-1" of Complaint, Rollo, p. 19.
- [20] Annexes "C-2," "C-3," "D," "D-1" and "D-2" of Complaint, Rollo, pp. 20-23.
- [21] Id., p. 21.
- [22] Id., p. 191.
- [23] Ibid.
- [24] Agpalo, Legal Ethics, 4[th] Edition, 1989, p. 159, citing *Re Macy*, 196 P1095, 14 ALR 848 (1921); *People ex rel. Atty. Gen. v. Beattie*, 137 Ill. 553, 27 NE 1103.
- [25] *Ramos vs. Pallugna*, A.C. No. 5908, October 25, 2004, 441 SCRA 220, 227.
- [26] *Amaya vs. Tecson*, A.C. No. 5996, February 7, 2005, 450 SCRA 510, 516.
- [27] Ibid.
- [28] *Gatchalian Promotion Talents Pool, Inc. vs. Naldoza*, A.C. No. 4017, September 29, 1999, 315 SCRA 406.
- [29] A.C. No. 6084, September 3, 2003, 410 SCRA 258.
- [30] No. L-27654, February 18, 1970, 31 SCRA 562.

[31] Berbano vs. Barcelona, supra, p. 264.

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