THEODORE C. BRITANICO, COMPLAINANT, VS. JUDGE WENIE D. ESPINOSA, REGIONAL TRIAL COURT OF DUMAGUETE CITY, BRANCH 42, RESPONDENT.

A.M. NO. MTJ-04-1568. April 07, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is an administrative complaint filed by Theodore C. Britanico against Judge Wenie D. Espinosa.[1] In a verified letter complaint,[2] complainant averred: Sometime in June 1999 complainant was introduced to respondent and his wife, Eprol Z. Espinosa, because they were selling beach properties. Trusting in the stature of respondent as a judge, complainant agreed to buy six parcels of land for P3,500,000. He made down payments on August 11, 1999 - P10,000; on September 15, 1999 - P30,000; and on October 21, 1999 - P60,000, for a total of P100,000. The balance was to be paid upon the signing of the deed of sale.

Upon seeing the deed of sale, complainant questioned the authenticity of the signatures of the lot owners, aware that they were all living in the United States. Respondent assured complainant of the regularity of the sale and said that he was putting his position as judge on the line for the transaction.

On a second meeting with respondent and his wife, on November 2, 1999, complainant requested for a special power of authority from the property co-owners authorizing either respondent or his wife to sell the property for them. Respondent and his wife took offense at complainant's request and respondent said that complainant should take his word on the matter and that he was staking his position as a judge. After complainant tried to reason with respondent, the latter and his wife stood up and left.

Upon closer scrutiny of the properties' titles, complainant discovered that the alienation of the properties within five years of the issuance of the title was prohibited by Commonwealth Act No. 141. The certificates of title were issued on October 21, 1997. The negotiations and initial payments were made in 1999 or within two years of the issuance of the titles.

Complainant learned later on that the same properties were being sold to another buyer. This forced complainant to place a notice of adverse claim on the titles to protect his interests over the properties.

In response to a referral by the Court Administrator, respondent made his comment in a letter[3] dated February 12, 2004, alleging that: The accusations in the complaint are mere restatements of allegations filed before the Office of the City Prosecutor of Bacolod City in a complaint for swindling which was eventually dismissed for insufficient evidence. During the entire transaction with respondent's wife, complainant was aware of the nature of the properties being sold. Prior to complainant's decision to buy the properties, he examined and scrutinized the titles. He, therefore, cannot claim that he was being deceived.

Respondent admits the preparation of the Deed of Absolute Sale. He claims, however, that he made it at the instance of complainant and that such was only a draft and was not intended to formalize the transaction.

Respondent also admits that he was present during the November 2, 1999 meeting. He counters by saying that he went only because he was made to believe that complainant wanted him present. The failure of the transaction, he further avers, was directly attributable to complainant, due to his failure to pay the remaining consideration of P3,400,000.

In a Reply Affidavit,[4] dated March 15, 2004, complainant manifested that in spite of the fact that respondent knew of the prohibition on alienation of the properties, respondent still participated in the negotiation of the sale of the properties. In fact, aware of the prohibition, respondent advised the parties to execute an undated deed of absolute sale, to be dated only when the period of prohibition shall have lapsed. Thus, instead of advising against the sale during the prohibited period, respondent pursued it.

In a document entitled Joinder Affidavit,[5] dated April 5, 2004, respondent reiterated the following: His presence at the meeting in Bob's Restaurant in Bacolod City sometime in November 1999 was at the insistence of complainant. The deed of sale prepared by respondent was in the nature of a draft and only for reference of the parties.

Respondent claimed that his participation in the transaction was limited to the following: (a) assurance that the properties belonged to the Zaragoza family; (b) assurance that Amado G. Zaragoza was the agent/AIF of the landowners; and (c) the role of Eprol Z. Espinosa, his wife, in the transaction.

In a Reply Affidavit,[6] dated May 3, 2004, complainant countered thus: Respondent assured him of the legality of the transaction and that respondent was placing his capacity as a judge on the line to assure its legality. And only by such assurance did complainant continue to pursue the transaction.

Complainant controverts respondent's claim that the deed of absolute sale he prepared was a mere draft by stating that the deed was already signed by all of the owners of the properties when complainant received it.

In a letter[7] dated May 20, 2004, respondent disclaimed that it was his alleged assurance in a meeting on November 2, 1999 that caused complainant to enter the transaction. He claimed that the meeting with complainant occurred after complainant had already paid a total of P100,000 in down payments for the properties. Respondent reiterated that the deed of sale he prepared was only a draft.

In a Reply Affidavit,[8] dated June 9, 2004, complainant claimed that prior to the November 2, 1999 meeting respondent had assured him of the legality of the transaction in a meeting sometime in June 1999.

Complainant alleged that the various documents attached by respondent as Annexes "A" to "H" to his Joinder Affidavit were falsified documents. He further averred that respondent's allegations on the return of the down payments are inconsistent. In respondent's counter-affidavit, he alleged that his wife could not return the money because of complainant's different addresses. However, in respondent's letter dated May 20, 2004, respondent claimed that his wife was actually able to find complainant but according to his wife complainant refused to accept the money.

In a letter[9] dated June 28, 2004, respondent claimed that at the outset he did not know anything about the nature of the subject properties since they belonged to the family of his wife and he was not very particular about them for ethical reasons. He added that his wife could not locate the complainant in order to return the amount of P100,000, representing the partial payments made. Complainant, respondent claims, intentionally evaded receiving the amount.

In a letter[10] dated July 29, 2004, respondent submitted his summary of the case.

The Court referred the matter to the Court Administrator who submitted an evaluation and recommendation, dated

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September 20, 2004, as follows:

> EVALUATION: The records of the case establish that:
>
> 1. Respondent judge was present in at least two (2) meetings sometime in 1999 between his spouse and the complainant to discuss the sale of the real properties; and
>
> 2. Respondent himself drafted the Deed of Absolute Sale of the subject real properties.
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> Respondent's act of drafting the Deed of Absolute Sale is highly improper. As a judge, he should know that the transaction being undertaken was highly irregular since the certificates of title of the real properties were issued as Free Patents, making the land subject to the prohibition against sale for a period of five (5) years from their date of issuance. He did not call his wife's attention to the prohibition, but allowed her to continue with the transaction and even accompanied her to the meetings with complainant to discuss the terms of the sale.
>
> A closer look at the Deed of Absolute Sale prepared by respondent shows that it was undated but one of its clauses contains the month and year, November 2002 - the time when the real properties could be legally alienated. This is a clear indication of respondent's participation in the commission of an irregular act. His complicity in the transaction is indubitable. He even used his position to lend credence to the transaction.
>
> Thus, there is sufficient evidence to hold the respondent liable under Canon 2 of the Code of Judicial Conduct (Now, Canon 4 , Section 1 of the New Code of Judicial Conduct, A.M. No. 03-05-01-SC, promulgated 27 April 2004, effective 1 June 2004.), which provides, "A judge should avoid impropriety and the appearance of impropriety in all activities." The Court, in a number of cases, has strongly emphasized that the official conduct of a judge should be free from impropriety or any appearance thereof; his personal behavior should always be beyond reproach, not only in the performance of his duties but also in everyday life (Cabrera vs. Pajares, 142 SCRA 127; Luque vs. Kayanan, 29 SCRA 165; Jakosalem vs. Judge Cordovez, 58 SCRA 11; Jugueta vs. Boncaros, 60 SCRA 27). It is quite clear that the respondent judge has acted in a manner unbefitting his high judicial office.
>
> RECOMMENDATION: Respectfully submitted for the consideration of this Honorable Court is our recommendation that the respondent Judge Wenie D. Espinosa, be found liable for violation of Canon 2 of the Code of Judicial Conduct
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> Under A.M. No. 01-8-10-SC, a violation of the Code of Judicial Conduct constitutes gross misconduct, which is classified as a serious charge for which the sanction ranges from fine to dismissal from the service. Considering, however, that respondent's complicity in the transaction appears to be isolated and that he did not earn a single centavo from it, and considering further that this is respondent's first transgression, a tempered administrative penalty is deemed appropriate. Accordingly, it is submitted that the instant administrative complaint be re-docketed as a regular administrative matter and that respondent be FINED in the amount of TWENTY THOUSAND PESOS (P20,000.00), with the WARNING that subsequent similar transgressions shall be dealt with more severely.[11]

In a resolution, dated November 10, 2004, the Court noted the complaint, docketed the same as a regular administrative matter, and noted the memorandum of the Court Administrator.

The Court agrees with the evaluation and recommendation of the Court Administrator.

Although many of the facts raised in the complaint remain debatable, the following were established by the evidence: First, respondent attended two of the meetings regarding the sale of the properties. Respondent admitted this in his letter[12] dated July 29, 2004. Second, respondent prepared the deed of absolute sale, even if it is as he says "merely a draft." Respondent likewise admitted this in the pleadings and documents he filed with the Court.

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The sale of the property was prohibited by law. The Original Certificate of Title was a Free Patent which on its face cited Commonwealth Act No. 141, Section 18,[13] which prohibits alienation of the property within five years of the grant of the patent. The Free Patent was granted on October 21, 1997. Therefore, the negotiations which took place and the down payments which were made in 1999 were well within the prohibited period.

Canon 2 of the Code of Judicial Ethics[14] states that "A judge should avoid impropriety and the appearance of impropriety in all activities." In Calilung v. Suriaga, the Court expounded on this rule, thus:

> It is evident from the aforesaid provisions that both the reality and the appearance must concur. Case law repeatedly teaches that judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon, which he has to pay for accepting and occupying an exalted position in the administration of justice. The irresponsible or improper conduct of a judge erodes public confidence in
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> the judiciary. It is thus the duty of the members of the bench to avoid any impression of impropriety to protect the image and integrity of the judiciary.
>
> This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties. They are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. Thus, their official conduct should remain free from any appearance of impropriety and should be beyond reproach.[15]

Respondent, being a member of the Judiciary, should have restrained himself from participating in the sale of the properties. In fact, it was incumbent upon him to advise the parties to discontinue the transaction because it was contrary to law. Granting, for the sake of argument, that the deed of sale he prepared was only a draft, it is still an act which pursued the continuance of the sale. Being a judge, he should have taken steps to prevent the sale, or at least he should have informed the parties that the sale was illegal.

It is clear, therefore, that respondent violated Canon 2 of the Code of Judicial Conduct. Considering, however, the nature of respondent's violation, and taking into account his degree of involvement in the transaction, and considering further that he made no pecuniary gain, and that this is his first violation, a tempered sanction is appropriate.

WHEREFORE, respondent Judge Wenie D. Espinosa is found GUILTY of gross misconduct constituting a violation of Canon 2 of the Code of Judicial Conduct. Respondent is hereby FINED in the amount of P20,000 and is WARNED that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Municipal Trial Court, Sipalay City, Negros Occidental.

[2] Dated December 4, 2003; Rollo, pp. 2 - 6.

[3] Rollo, pp. 70 - 74.

[4] Rollo, pp. 477 - 480.

[5] Id. at 519 - 520.

[6] Rollo, pp. 498 - 501.

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[7] Id. at 554 - 556.

[8] Id. at 548 - 551.

[9] Rollo, pp. 562 - 564.

[10] Id. at 566 - 569.

[11] Rollo, pp. 577- 578.

[12] Rollo, pp. 566 - 569.

[13] Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

[14] Now Canon 4, Section 1 of the New Code of Judicial Conduct, A.M. No. 03-05-01-SC, promulgated on April 27, 2004 and effective on June 1, 2004.

[15] 393 PHIL. 739, 764 - 765 (2000).

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