

## **THIRD DIVISION**

**[ A.M. SDC-97-2-P, February 24, 1997 ]**

**SOPHIA ALAWI, COMPLAINANT, VS. ASHARY M. ALAUYA, CLERK  
OF COURT VI, SHARI'A DISTRICT COURT, MARAWI CITY,  
RESPONDENT.**

### **D E C I S I O N**

**NARVASA, C.J.:**

Sophia Alawi was (and presumably still is) a sales representative (or coordinator) of E. B. Villarosa & Partners Co., Ltd. of Davao City, a real estate and housing company. Ashari M. Alauya is the incumbent executive clerk of court of the 4th Judicial Shari'a District in Marawi City. They were classmates, and used to be friends.

It appears that through Alawi's agency, a contract was executed for the purchase on installments by Alauya of one of the housing units belonging to the above mentioned firm (hereafter, simply Villarosa & Co.); and in connection therewith, a housing loan was also granted to Alauya by the National Home Mortgage Finance Corporation (NHMFC).

Not long afterwards, or more precisely on December 15, 1995, Alauya addressed a letter to the President of Villarosa & Co. advising of the termination of his contract with the company. He wrote:

" \*\* I am formally and officially withdrawing from and notifying you of my intent to terminate the Contract/Agreement entered into between me and your company, as represented by your Sales Agent/Coordinator, SOPHIA ALAWI, of your company's branch office here in Cagayan de Oro City, on the grounds that my consent was vitiated by gross misrepresentation, deceit, fraud, dishonesty and abuse of confidence by the aforesaid sales agent which made said contract void ab initio. Said sales agent acting in bad faith perpetrated such illegal and unauthorized acts which made said contract an Onerous Contract prejudicial to my rights and interests."

He then proceeded to expound in considerable detail and quite acerbic language on the "grounds which could evidence the bad faith, deceit, fraud, misrepresentation, dishonesty and abuse of confidence by the unscrupulous sales agent \*\* ;" and closed with the plea that Villarosa & Co. "agree for the mutual rescission of our contract, even as I inform you that I categorically state on record that I am terminating the contract \*\*. I hope I do not have to resort to any legal action before said onerous and manipulated contract against my interest be annulled. I was actually fooled by your sales agent, hence the need to annul the controversial contract."

Alauya sent a copy of the letter to the Vice-President of Villarosa & Co. at San Pedro, Gusa, Cagayan de Oro City. The envelope containing it, and which actually went through the post, bore no stamps. Instead at the right hand corner above the description of the addressee, the words, "Free Postage — PD 26," had been typed.

On the same date, December 15, 1995, Alauya also wrote to Mr. Fermin T. Arzaga, Vice-President, Credit & Collection Group of the National Home Mortgage Finance Corporation (NHMFC) at Salcedo Village, Makati City, repudiating as fraudulent and void his contract with Villarosa & Co.; and asking for cancellation of his housing loan in connection therewith, which was payable from salary deductions at the rate of P4,338.00 a month. Among other things, he said:

" \*\* (T)hrough this written notice, I am terminating, as I hereby annul, cancel, rescind and voided, the 'manipulated contract' entered into between me and the E.B. Villarosa & Partner Co., Ltd., as represented by its sales agent/coordinator, SOPHIA ALAWI, who maliciously and fraudulently manipulated said contract and unlawfully secured and pursued the housing loan without my authority and against my will. Thus, the contract itself is deemed to be void ab initio in view of the attending circumstances, that my consent was vitiated by misrepresentation, fraud, deceit, dishonesty, and abuse of confidence; and that there was no meeting of the minds between me and the swindling sales agent who concealed the real facts from me."

And, as in his letter to Villarosa & Co., he narrated in some detail what he took to be the anomalous actuations of Sophia Alawi.

Alauya wrote three other letters to Mr. Arzaga of the NHMFC, dated February 21, 1996, April 15, 1996, and May 3, 1996, in all of which, for the same reasons already cited, he insisted on the cancellation of his housing loan and discontinuance of deductions from his salary on account thereof.<sup>a</sup> He also wrote on January 18, 1996 to Ms. Corazon M. Ordoñez, Head of the Fiscal Management & Budget Office, and to the Chief, Finance Division, both of this Court, to stop deductions from his salary in relation to the loan in question, again asserting the anomalous manner by which he was allegedly duped into entering into the contracts by "the scheming sales agent."<sup>b</sup>

The upshot was that in May, 1996, the NHMFC wrote to the Supreme Court requesting it to stop deductions on Alauya's UHLP loan "effective May 1996," and began negotiating with Villarosa & Co. "for the buy-back of \*\* (Alauya's) mortgage, and \*\* the refund of \*\* (his) payments."<sup>c</sup>

On learning of Alauya's letter to Villarosa & Co. of December 15, 1995, Sophia Alawi filed with this Court a verified complaint dated January 25, 1996 -- to which she appended a copy of the letter, and of the above mentioned envelope bearing the typewritten words, "Free Postage — PD 26."<sup>[1]</sup> In that complaint, she accused Alauya of:

1. "Imputation of malicious and libelous charges with no solid grounds through manifest ignorance and evident bad faith;"

2. "Causing undue injury to, and blemishing her honor and established reputation;"
3. "Unauthorized enjoyment of the privilege of free postage \*\*;" and
4. Usurpation of the title of "attorney," which only regular members of the Philippine Bar may properly use.

She deplored Alauya's references to her as "unscrupulous, swindler, forger, manipulator, etc." without "even a bit of evidence to cloth (sic) his allegations with the essence of truth," denouncing his imputations as irresponsible, "all concoctions, lies, baseless and coupled with manifest ignorance and evident bad faith," and asserting that all her dealings with Alauya had been regular and completely transparent. She closed with the plea that Alauya "be dismissed from the service, or be appropriately disciplined (sic) \*\* "

The Court resolved to order Alauya to comment on the complaint. Conformably with established usage that notices of resolutions emanate from the corresponding Office of the Clerk of Court, the notice of resolution in this case was signed by Atty. Alfredo P. Marasigan, Assistant Division Clerk of Court.<sup>[2]</sup>

Alauya first submitted a "Preliminary Comment"<sup>[3]</sup> in which he questioned the authority of Atty. Marasigan to require an explanation of him, this power pertaining, according to him, not to "a mere Asst. Div. Clerk of Court investigating an Executive Clerk of Court." but only to the District Judge, the Court Administrator or the Chief Justice, and voiced the suspicion that the Resolution was the result of a "strong link" between Ms. Alawi and Atty. Marasigan's office. He also averred that the complaint had no factual basis; Alawi was envious of him for being not only "the Executive Clerk of court and ex-officio Provincial Sheriff and District Registrar," but also "a scion of a Royal Family \*\*."<sup>[4]</sup>

In a subsequent letter to Atty. Marasigan, but this time in much less aggressive, even obsequious tones,<sup>[5]</sup> Alauya requested the former to give him a copy of the complaint in order that he might comment thereon.<sup>[6]</sup> He stated that his acts as clerk of court were done in good faith and within the confines of the law; and that Sophia Alawi as sales agent of Villarosa & Co. had, by falsifying his signature, fraudulently bound him to a housing loan contract entailing monthly deductions of P4,333.10 from his salary.

And in his comment thereafter submitted under date of June 5, 1996, Alauya contended that it was he who had suffered "undue injury, mental anguish, sleepless nights, wounded feelings and untold financial suffering," considering that in six months, a total of P26,028.60 had been deducted from his salary.<sup>[7]</sup> He declared that there was no basis for the complaint; in communicating with Villarosa & Co. he had merely acted in defense of his rights. He denied any abuse of the franking privilege, saying that he gave P20.00 plus transportation fare to a subordinate whom he entrusted with the mailing of certain letters; that the words: "Free Postage — PD 26," were typewritten on the envelope by some other person, an averment corroborated by the affidavit of Absamen C. Domocao, Clerk IV (subscribed and sworn to before respondent himself, and attached to the comment as Annex J);<sup>[8]</sup>

and as far as he knew, his subordinate mailed the letters with the use of the money he had given for postage, and if those letters were indeed mixed with the official mail of the court, this had occurred inadvertently and because of an honest mistake.  
[9]

Alauya justified his use of the title, "attorney," by the assertion that it is "lexically synonymous" with "Counsellors-at-law," a title to which Shari'a lawyers have a rightful claim, adding that he prefers the title of "attorney" because "counsellor" is often mistaken for "councilor," "konsehal" or the Maranao term "consial," connoting a local legislator beholden to the mayor. Withal, he does not consider himself a lawyer.

He pleads for the Court's compassion, alleging that what he did "is expected of any man unduly prejudiced and injured."<sup>[10]</sup> He claims he was manipulated into reposing his trust in Alawi, a classmate and friend.<sup>[11]</sup> He was induced to sign a blank contract on Alawi's assurance that she would show the completed document to him later for correction, but she had since avoided him; despite "numerous letters and follow-ups" he still does not know where the property -- subject of his supposed agreement with Alawi's principal, Villarosa & Co. -- is situated.<sup>[12]</sup> He says Alawi somehow got his GSIS policy from his wife, and although she promised to return it the next day, she did not do so until after several months. He also claims that in connection with his contract with Villarosa & Co., Alawi forged his signature on such pertinent documents as those regarding the down payment, clearance, lay-out, receipt of the key of the house, salary deduction, none of which he ever saw.<sup>[13]</sup>

Averring in fine that his acts in question were done without malice, Alauya prays for the dismissal of the complaint for lack of merit, it consisting of "fallacious, malicious and baseless allegations," and complainant Alawi having come to the Court with unclean hands, her complicity in the fraudulent housing loan being apparent and demonstrable.

It may be mentioned that in contrast to his two (2) letters to Assistant Clerk of Court Marasigan (dated April 19, 1996 and April 22, 1996), and his two (2) earlier letters both dated December 15, 1996 -- all of which he signed as "Atty. Ashary M. Alauya" -- in his Comment of June 5, 1996, he does not use the title but refers to himself as "DATU ASHARY M. ALAUYA."

The Court referred the case to the Office of the Court Administrator for evaluation, report and recommendation.<sup>[14]</sup>

The first accusation against Alauya is that in his aforesaid letters, he made "malicious and libelous charges (against Alawi) with no solid grounds through manifest ignorance and evident bad faith," resulting in "undue injury to (her) and blemishing her honor and established reputation." In those letters, Alauya had written inter alia that:

- 1) Alawi obtained his consent to the contracts in question "by gross misrepresentation, deceit, fraud, dishonesty and abuse of confidence;"
- 2) Alawi acted in bad faith and perpetrated \*\* illegal and unauthorized acts \*\* \*\* prejudicial to \*\* (his) rights and interests;"