

## EN BANC

[ A.C. No. 4697, November 25, 2014 ]

**FLORENCIO A. SALADAGA, COMPLAINANT, VS. ATTY. ARTURO B. ASTORGA, RESPONDENT.**

**[A.C. NO. 4728]**

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### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Membership in the legal profession is a high personal privilege burdened with conditions,<sup>[1]</sup> 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.<sup>[2]</sup> 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."<sup>[3]</sup> 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."<sup>[4]</sup>

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.<sup>[5]</sup>

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.<sup>[6]</sup>

Complainant was subsequently dispossessed of the property by RBAI.<sup>[7]</sup>

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<sup>[8]</sup> 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."<sup>[9]</sup> Accordingly, an Information<sup>[10]</sup> 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,<sup>[11]</sup> 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<sup>nd</sup> 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<sup>[12]</sup> dated January 28, 1997 and Supplemental Complaint<sup>[13]</sup> 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.<sup>[14]</sup>

In his Consolidated Answer<sup>[15]</sup> 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<sup>[16]</sup> 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.<sup>[17]</sup>

### ***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."<sup>[18]</sup> 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,<sup>[19]</sup> 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."<sup>[20]</sup> 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,<sup>[21]</sup> 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.<sup>[22]</sup>

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.<sup>[23]</sup>

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