

THIRD DIVISION

[A.M. NO. RTJ-03-1796, February 10, 2006]

GARY P. ROSAURO, COMPLAINANT, VS. JUDGE ALFREDO E. KALLOS, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, LEGASPI CITY, BRANCH X, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This is an administrative complaint against respondent Judge Alfredo E. Kallos ("respondent Judge") of the Regional Trial Court, Legaspi City, Branch X ("Branch X"), for "Gross and Serious Misconduct."

The Facts

In his Complaint dated 12 July 2002, complainant Gary P. Rosauro ("complainant") alleged that in June 1997, respondent Judge, a friend and *kumpadre*, offered to sell to him an unregistered parcel of land in Penaranda^[1] Street, Legaspi City ("Lot No. 1470") measuring 235 square meters. Respondent Judge allegedly claimed ownership over Lot No. 1470. Complainant orally agreed to buy Lot No. 1470 for P2 million provided that respondent Judge take care of its registration in complainant's name, at no additional cost. Complainant wanted to donate Lot No. 1470 to his two children, Marivic and Allan Rosauro ("Marivic and Allan").

Starting 30 June 1997, complainant, on respondent Judge's demands, made several partial payments for Lot No. 1470 for which respondent Judge issued receipts.^[2] In the course of collecting complainant's payments, respondent Judge also obtained from complainant a P50,000 loan, payable in two months from 28 March 1998.^[3] By August 1998, complainant's total payments amounted to P1,695,000.^[4]

Meanwhile, in February 1998, a certain Atty. German Mata ("Atty. Mata") filed with the Regional Trial Court, Legaspi City, Branch I ("Branch I"), a petition ("LRC Case No. N-683") to register Lot No. 1470 in Marivic and Allan's name. Branch I initially dismissed LRC Case No. N-683. However, on Atty. Mata's motion, Branch I reconsidered, reinstated the case, and received petitioners' evidence.^[5] Nevertheless, on 19 June 1999, Branch I eventually dismissed the case.^[6]

Complainant subsequently learned, from a receipt^[7] and the Deed of Absolute Sale^[8] respondent Judge gave him, that a certain Rodelia Esplana-Guerrero ("Guerrero") owned Lot No. 1470. Complainant also learned that Guerrero had sought the reconstitution of her alleged title to Lot No. 1470 in the Regional Trial Court, Legaspi City, Branch IV ("Branch IV") but Branch IV dismissed Guerrero's

petition on 16 November 1993.

With this new information and respondent Judge's failure to register Lot No. 1470, complainant hired a lawyer to rescind his contract with respondent Judge. Accordingly, complainant's counsel wrote respondent Judge on 21 August 2001, demanding rescission. On 12 September 2001, respondent Judge, using his sala's official stationery, replied that he needs more time to confer with Guerrero. After a few months, complainant's counsel reiterated the demand for rescission. Again using his sala's official stationery, respondent Judge replied on 8 May 2002 that Guerrero is still raising the amount to refund complainant.^[9]

For respondent Judge's failure to refund the payments, his misrepresentations on Lot No. 1470's ownership and registrability, and Lot No. 1470's non-registration, complainant filed this Complaint.

In his Comment, respondent Judge admitted offering to sell Lot No. 1470 to complainant but denied claiming ownership over that property. Respondent Judge alleged that at the outset, he informed complainant that Guerrero is the owner of Lot No. 1470. Complainant also allegedly knew that respondent Judge merely acted as Guerrero's representative so he could apply part of the sale's proceeds to satisfy legal fees Guerrero owed him for services rendered before his appointment to the Bench. Respondent Judge further alleged that he informed complainant of Guerrero's unsuccessful attempt to reconstitute her title to Lot No. 1470. On the non-registration of Lot No. 1470, respondent Judge stated that since LRC Case No. N-683 was still pending in Branch I, it was premature to conclude that he failed to comply with his undertaking to register that property. Respondent Judge also claimed that complainant hired Atty. Mata to file and litigate LRC Case No. N-683.

In his Reply, complainant maintained that respondent Judge never informed him that Guerrero owned Lot No. 1470 or that respondent Judge was merely acting as Guerrero's representative. On LRC Case No. N-683, complainant countered that respondent Judge hired Atty. Mata as part of his undertaking to register Lot No. 1470. Complainant also disclosed that respondent Judge tried to have this Complaint withdrawn.^[10] Complainant added that respondent Judge is known for borrowing money from "tennis court buddies" in exchange for empty promises to render legal services.^[11]

Respondent Judge filed a Rejoinder reiterating the claims in his Comment. Respondent Judge denied soliciting the withdrawal of this Complaint or borrowing money from "tennis court buddies."

The Court referred this matter to Associate Justice Salvador J. Valdez, Jr. ("Justice Valdez") of the Court of Appeals for investigation, report, and recommendation.

The Report and Recommendation of Justice Valdez

In his Report and Recommendation ("Report"), Justice Valdez found respondent Judge liable for gross misconduct and recommended his suspension from service for six months. The Report reads:

Quite obviously, the respondent judge importuned the complainant to buy the subject lot because he knows the latter to be a man of means as he unwittingly revealed in his Comment wherein he stated, inter alia, that "the deed of absolute sale was made pursuant to the desire of the complainant that the vendee(s) shall be his children Marivic and Allan because his other commercial lot and building in the heart of Legazpi Port w[ere] already placed in the name of his other two (2) children." That the respondent had first ascertained the paying capacity of his buyer, is a rule of thumb in any financial dealing. What is deplorable is that he did not make a full disclosure of the nature of the property involved in the case at bar. As earlier pointed out, he did not let the complainant know that it is not owned by him but by a certain Rodelia Esplana-Guerrero. He insidiously made the revelation only after the complainant had already given him P130,000.00.

What is more, he assured the complainant of the lot's regist[ra]bility as evidenced by the receipt of the latter's payment of P100,000.00 as shown by Exhibits "A" and "B", wherein he made it appear that the first payment of P30,000.00 was "for follow (up) of papers of LRA (Land Registration Authority), Manila x x x preparatory to the issuance of title to said lot" and the second, in the amount of P70,000.00 was for "the expenses in securing the title x x x." He did not level with the complainant by disclosing that there was issued on December 12, 1927, a Decree No. 287130 for the lot but no title was derived therefrom; hence, Rodelia Esplana's petition for reconstitution of title was peremptorily denied way back on [November] 16, 1993. In all likelihood, the decree was not in the name of Rodelia. Instead, he subsequently caused to be filed a petition for original registration on February 18, 1998. As a judge, he knows or is chargeable with knowledge that such a petition would hardly prosper in light of the earlier decree of registration. Accordingly, even that subsequent petition was eventually denied. Even his testimony as the sole witness in the land registration case afforded no help, presumably because he has no personal knowledge about the lot's genesis. In the interim, he persisted in getting money from the complainant for the titling of the lot, apart from payments on the purchase price. From the receipts and other documents presented, respondent has received from the complainant the aggregate amount of [P1,695,000] on the account of the lot.

Respondent's defense that he merely brokered for Rodelia Esplana-Guerrero so that it should be the latter who should return the payments made by the complainant when the lot could not be titled, is no defense at all. On the contrary, his acting in a fiduciary relation with the real owner of the lot, if true, transgressed Rule 5.06 of the same Canon 5. More than that, when he assured the complainant that the lot will be titled, he wittingly or unwittingly dragged the Regional Trial Court of Legazpi, of which he is a presiding judge of one of its Branches, into the failed transaction as the complainant must have believed him because of his position in the court.

Unfortunately, the complainant, x x x, was left by the respondent judge holding an empty bag.

Respondent's cupidity for complainant's money was not confined to the sale of the lot but even included a loan of P50,000.00 on March 28, 1998 which he promised to pay in two (2) months, but which he failed to prove to have paid. Obtaining such a loan is already forbidden by Rule 5.04 of Canon 5. Willful failure to pay the loan is also an administrative offense under Section 52(c)(10), Rule IV of Memorandum Circular No. 19, s. 1999 of the Civil Service Commission.

PREMISES CONSIDERED, the undersigned recommends that the respondent judge be found GUILTY OF GROSS MISCONDUCT as charged and that he be SUSPENDED from office without salary and other benefits for SIX (6) MONTHS. ^[12]

The Court's Ruling

The Court finds respondent Judge liable for violation of Rules 5.02, 5.06, and 2.03 of the Code of Judicial Conduct^[13] ("Code") and for Impropriety.

Respondent Judge Violated Rule 5.02 and Rule 5.06 of the Code

Rule 5.02

Rule 5.02 of the Code provides that "[a] judge shall refrain from financial and business dealings that tend to x x x, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court x x x." This provision, which filled the void left by Article 14(1)^[14] of the Spanish Code of Commerce (prohibiting judges from engaging in commerce within their jurisdiction), is meant to limit judges' commercial affairs except to the extent allowed in Rule 5.03^[15] of the Code.^[16]

Here, respondent Judge took part in a commercial transaction falling outside of the area delineated in Rule 5.03. Worse, respondent Judge did so in an underhanded manner, concealing vital information on Lot No. 1470's ownership and non-registrability until after the sale had been consummated. By involving himself in such a transaction, respondent Judge not only allowed himself to be distracted from the performance of his judicial duties,^[17] he also increased his involvement with persons likely to come before his sala regarding Lot No. 1470, thus increasing the chances of his disqualification from future litigation concerning that property. As we observed in ***Berin v. Judge Barte***,^[18] also involving a judge who brokered a real estate sale:

By allowing himself to act as agent in the sale of the subject property, respondent judge has increased the possibility of his disqualification to act as an impartial judge in the event that a dispute involving the said contract of sale arises. Also, the possibility that the parties to the sale might plead before his court is not remote and his business dealings with them might [not only] create suspicion as to his fairness but also to [his ability to] render it in a manner that is free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity x x x.