

SECOND DIVISION

[A.M. No. MTJ-02-1443, July 31, 2002]

**JOSIE BERIN AND MERLY ALORRO, COMPLAINANTS, VS. JUDGE
FELIXBERTO P. BARTE, MUNICIPAL CIRCUIT TRIAL COURT,
HAMTIC, ANTIQUE, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a complaint for grave and serious misconduct filed by Josie Berin and Merly Alorro against Judge Felixberto P. Barte, Presiding Judge of the Municipal Circuit Trial Court (MCTC), Hamtic, Tobias Fornier and Anini-y, Antique.

Complainants Josie Berin and Merly Alorro are real estate agents. They allege that sometime during the last week of January 2001, respondent judge invited them to his office and asked them to look for a vendor of a lot for sale in Antique because the Manila Mission of the Church of Jesus Christ of Latter Day Saints, Inc. wanted to buy a site for its church in Antique. Complainants claim that they found a vendor, Eleanor M. Checa-Santos, who owned a lot consisting of 4,000 square meters, known as Lot 5555-B, Psd-06-000304 and located in Barrio Caridad, Municipality of Now, Hamtic, Antique, which she was willing to sell; that they told respondent judge about the lot; that respondent judge informed them three days later that the Church was willing to pay P2.3 million for the lot; that respondent judge agreed that complainants would each receive a commission of P100,000.00 in case the sale took place; and that respondent judge would receive the money from the vendee and then deliver the share of each of the complainants. Complainants said they wanted to have the agreement in writing, but respondent judge refused, saying, "Do you have no trust in your Judge Barte?" This is the reason there is no written agreement of the transaction between them.

Complainants alleged that the sale was consummated and respondent judge received the purchase price, but, despite demands made by them for the payment of their commission, respondent judge gave them only P10,000.00 each, telling them to "take it or leave it." Hence, this complaint.

In his Comment, dated August 23, 2001, and Supplemental Comment, dated August 27, 2001, respondent judge denied the charges against him. He denied that he ever invited the complainants to his office in January 2001 and told them of the desire of the Church to buy a lot in Antique. According to him, as early as January 25, 2001, the Church had already purchased the same land described in the complaint and the vendee had already paid 50% of the sale price to the vendor, as evidenced by a Closing Certificate showing that the payment took place at the Metrobank, San Jose, Antique Branch on said date. Complainants said the Deed of Sale was notarized on February 12, 2001.

Respondent judge likewise denied that he agreed to pay complainants P100,000.00 each as commission for the sale. But he said that, sometime in November 1999, complainant Merly Alorro, whom he considered his friend, learned from complainant Josie Berin that the lot in question was up for sale, and Alorro told him about it. Based on such information, respondent judge said he was able to facilitate the sale of the land after almost two (2) years of hard work. Since he was able to realize some amount from the sale, he decided to give complainants a share for the information they gave him, although they never contributed to the success of the transaction. He gave complainant Berin P7,000.00 and Merly Alorro P12,000.00.

Respondent judge contended that he cannot be held liable in this administrative proceeding since the act complained of does not pertain to the performance of his official function as judge. He further contended that the case of *Teofilo Gil v. Eufonio Son*,^[1] which involved the dismissal of a judge for refusing to acknowledge and repay a loan of P15,000.00 which was acquired in return for a favor for employment, is inapplicable to this case because his transaction was an open and honest one, compared to the "secret deal" involved in the Gil case.

The Office of the Court Administrator (OCA) agrees that respondent judge cannot be held liable for refusing to honor his obligation under the alleged contract on the ground that the same has no relation to his official duties as a judge and does not amount either to maladministration or willful intentional neglect and failure to discharge the duties of a judge. However, it believes that respondent is liable for violation of Canon 5, Rule 5.02 of the Code of Judicial Conduct and recommends accordingly that he be fined P5,000.00.

The recommendation is on the main well taken.

The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness. He must not only be honest but also appear to be so. He must not only be a "good judge," he must also appear to be a "good person."^[2]

Whether the sale of the property was effected through the efforts of complainants making them entitled to a commission is a matter that should be threshed out in a judicial proceeding. Our concern in this case is whether respondent judge committed an impropriety in acting as a broker in the sale of a real estate, for which he admits receiving a commission.

Article 14 of the Code of Commerce prohibits members of the judiciary and prosecutors from engaging in commerce within their jurisdiction. It provides:

Art. 14. The following cannot engage in commerce, either in person or by proxy, nor can they hold any office or have any direct, administrative, or financial intervention in commercial or industrial companies within the limits of the districts, provinces, or towns in which they discharge their duties:

1. Justices of the Supreme Court, judges and officials of the department of public prosecution in active service. This provision shall not be applicable to mayors, municipal judges, and municipal prosecuting attorneys nor those who by chance are temporarily discharging the functions of judge or prosecuting attorney.