

## EN BANC

[ A.C. No. 11023, May 04, 2021 ]

**GRACITA P. DOMINGO-AGATON, COMPLAINANT, VS. ATTY. NINI D. CRUZ, RESPONDENT.**

### DECISION

#### PER CURIAM:

##### The Case

This is a Disbarment Complaint<sup>[1]</sup> filed by Gracita P. Domingo-Agaton (complainant) before the Office of the Bar Confidant against Atty. Nini D. Cruz (respondent), for Grave Misconduct, constitutive of qualified theft, *estafa*, and betrayal of trust, defined and penalized under the Revised Penal Code.

On February 3, 2016, the Court issued a Resolution<sup>[2]</sup> requiring respondent to file comment on the complaint. Respondent, however, repeatedly failed to comply with the Court's directive and subsequent resolutions. In the Resolutions<sup>[3]</sup> dated January 9, 2017 and September 11, 2017, the Court "deemed as served" on respondent the February 3, 2016 Resolution and the January 9, 2017 Resolution, respectively.

On August 19, 2019, the Court issued another Resolution<sup>[4]</sup> requiring respondent to "show cause" why she should not be disciplinarily dealt with for failure to comply with the February 3, 2016 Resolution.

On February 24, 2020, the Court issued a Resolution<sup>[5]</sup> dispensing with respondent's comment, and considered the case submitted for resolution on the basis of the pleadings filed and attached documents.

##### *Complainant's Allegations*

Sometime in 2013, complainant engaged the services of respondent lawyer for the reacquisition of an ancestral home located in West Bajac-bajac, Olongapo City (the property), which was foreclosed by the Philippine National Bank (PNB). Complainant informed respondent that the Regional Trial Court (RTC), Branch 72 of Olongapo City rendered a decision pertaining to the property, which was then pending appeal before the Court of Appeals (CA). Complainant personally negotiated with PNB for the repurchase of the property. Upon being informed by complainant that the property was already sold to a third person, respondent proposed that complainant could still buy-back the property from PNB. Respondent then drafted and signed a Letter of Intent<sup>[6]</sup> for the repurchase of the property from PNB for P2.5 Million.<sup>[7]</sup>

After a few weeks, respondent informed complainant that PNB refused their offer. Nevertheless, respondent told complainant that the property was not yet sold, but was merely endorsed to a third party who acted as PNB's broker. Respondent then

assured complainant that upon advice of the Head of the Asset Acquired Department of the PNB, complainant had a good chance of buying back the property by filing a petition for consignation with the RTC.<sup>[8]</sup>

Accordingly, respondent instructed complainant to prepare the amount of P2.5 Million to be posted as bond in favor of PNB. The bond was purportedly to remain effective until PNB's acceptance of her offer. Convinced, complainant gave respondent P100,000.00, as filing fee for the petition, and P50,000.00, as her professional fee.<sup>[9]</sup>

On July 19, 2013, respondent filed a Complaint<sup>[10]</sup> for judicial consignation (consignation complaint) with the RTC, Branch 74 of Olongapo City, docketed as Civil Case No. 86-0-2013.

On September 7, 2014, respondent informed complainant that the RTC approved her bond in the amount of P2 Million.<sup>[11]</sup> Pursuant to respondent's instruction, complainant purchased a manager's check, Union Bank Manager's Check No. 0000300714<sup>[12]</sup> dated September 8, 2014, designating the RTC as payee for the amount of P2 Million.

On September 9, 2014, complainant went to the RTC to deposit the check. Thereat, respondent told her that the personnel authorized to receive the check was not around. Respondent then volunteered to personally deliver the check to the RTC personnel, under the following assurance: "*Alam mo naman Manager's Check yan, wala naman akong magagawa diyan, hindi ko naman kayang i-cash yan, ang payee ay Regional Trial Court. Ako na ang magbigay sa court para makabalik ka na sa work mo.*"<sup>[13]</sup> Persuaded, complainant gave the manager's check to respondent, who, in turn, signed a photocopy<sup>[14]</sup> thereof indicating her receipt.<sup>[15]</sup>

Several months passed, complainant did not hear any feedback from respondent. Every time complainant would request for a copy of the RTC's acknowledgment receipt of the P2 Million representing the value of her manager's check, as well as proof of PNB's acceptance of their offer, respondent would always come up with excuses.<sup>[16]</sup>

Beginning to suspect that something was amiss, complainant verified with the Office of the Clerk of Court of the RTC (COC-RTC), where she learned that in an Order<sup>[17]</sup> dated July 31, 2014, the RTC dismissed her consignation complaint for violation of the rule against forum shopping, long before she delivered her manager's check to respondent on September 9, 2014.

On August 13, 2015, the parties met, but respondent still failed to show the RTC's acknowledgment receipt of the manager's check. In their subsequent meeting on August 17, 2015, respondent promised to return her money by the end of August 2015. Thereafter, complainant never heard a word from respondent.<sup>[18]</sup>

Upon verification with her bank, complainant learned that her manager's check was cleared and deposited to the RTC's account on September 12, 2014. This was confirmed from the RTC's passbook indicating that complainant's manager's check was encashed on September 12, 2014.<sup>[19]</sup>

On October 6, 2015, complainant went to the COC-RTC, where Atty. John Aquino (Atty. Aquino), Clerk of Court VI, told her that her manager's check was actually withdrawn by a certain Josephine Chua (Chua) of Grand Pillar Development International, Inc. (Grand Pillar), a party to Civil Case No. 119-0-2008. Plaintiff therein, Josephine Lim (Lim), was represented by respondent lawyer. Atty. Aquino's formal Letter-Reply<sup>[20]</sup> to complainant's inquiry pertinently reads:

A verification was made on our Books of Accounts to trace the whereabouts of your Manager's Check. We found out that the Manager's Check you issued and intended for Civil Case No. 86-0-2013 was deposited on 12 September 2014 to Land Bank Account No. 038-0117-96, representing the Court's Fiduciary Trust Fund. The Manager's Check was delivered to the Office of the Clerk of Court of Regional Trial Court, Olongapo City by Christopher T. Perez, Sheriff IV of Regional Trial Court-Branch 74, Olongapo City not by your counsel Atty. Nini Cruz.

We have verified from Sheriff Christopher T. Perez that he received Manager's Check No. 0000300714 from your counsel Atty. Nini Cruz as payment in satisfaction of the Compromise Agreement dated 19 February 2013, where incidentally Atty. Nini Cruz is the counsel of the plaintiff in Civil Case No. 119-0-2008. Sheriff Christopher T. Perez and this office were not aware that Manager's Check No. 0000300714 was issued for Civil Case No. 86-0-2013 and not for Civil Case No. 119-0-2008.

Our office had deposited Manager's Check No. [0]000300714 to the Court's Fiduciary Trust Fund when it was delivered to this office by Sheriff Perez for safekeeping. The afore-mentioned check or its equivalent face value was later withdrawn from the Court's Fiduciary Trust Fund pursuant to the Order of the Court (RTC-Branch 74, Olongapo City) dated 15 September 2014 in Civil Case No. 119-0-2008.<sup>[21]</sup> (Underscoring supplied)

Accordingly, complainant sent demand letters to respondent, Lim, and Chua, respectively, for the return of the amount of her manager's check.<sup>[22]</sup>

In a Letter<sup>[23]</sup> dated October 9, 2015, Chua of Grand Pillar, through Atty. Ericson Chang Aguila (Atty. Aguila), replied claiming good faith in receiving the check as settlement for the obligation of Lim, who was represented by respondent lawyer in Civil Case No. 119-0-2008. The letter reads:

Had it not been for the action, representation, and assurance of Atty. Nini D. Cruz that said manager's check was plaintiff Josephine Lim's means of paying or settling the remaining balance of P1,994,769.50, x x x to my client, defendant Grand Pillar International Development, Inc., my client would not have filed an Urgent Motion for Release of Payment involving the same check. x x x [M]y client acted in utmost good faith and without any malice or deceit whatsoever.

If there is anyone who should be held responsible, accountable, and liable criminally, civilly, and administratively x x x it should only be Atty. Nini D. Cruz, and all persons behind her, in knowingly, willfully, and deliberately issuing and tendering said manager's check as plaintiff Josephine Lim's full payment and settlement of the remaining balance of

P1,995,769.50 x x x due to my client, Grand Pillar International Development, Inc.

Rest assured that my client is also very seriously contemplating on instituting the necessary criminal, civil, and administrative actions against Atty. Nini D. Cruz x x x.<sup>[24]</sup> (Underscoring supplied)

On November 5, 2015, complainant filed with the Office of the City Prosecutor of Olongapo City a criminal Complaint<sup>[25]</sup> for qualified theft against respondent, Lim, and Chua. In the Information<sup>[26]</sup> dated July 14, 2016, respondent and Lim were charged with qualified theft in Criminal Case No. 2016-1398.

Imputing moral obliquity to respondent's character, complainant refers to the Informations both dated August 17, 1999 docketed as Criminal Case Nos. 25660 and 25661,<sup>[27]</sup> wherein the Office of the Ombudsman (OMB) charged respondent with two counts of falsification of public document before the Sandiganbayan. Complainant claims that the criminal cases are now pending with the Municipal Circuit Trial Court, docketed as Criminal Case Nos. 847-04 and 848-04. Complainant also avers that on May 24, 2005, the OMB, through a Joint Decision<sup>[28]</sup> in administrative cases docketed as OMB-L-A-04-0651-J and OMB-L-A-04-0652-J, recommended for the dismissal of respondent, as then Assistant Provincial Prosecutor, from the government service on the ground of dishonesty.

Complainant, therefore, prays that respondent lawyer be disbarred.

### **The Court's Ruling**

Respondent deserves the ultimate penalty of disbarment.

In disbarment cases, complainant bears the burden of proof to satisfactorily prove the allegations in his/her complaint through substantial evidence;<sup>[29]</sup> that is, such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>[30]</sup>

In this case, complainant submitted the following documents to prove her allegations: (1) Letter of Intent<sup>[31]</sup> dated July 5, 2013 drafted and signed by respondent, offering PNB the amount of P2.5 Million for the repurchase of complainant's ancestral home; (2) Complaint<sup>[32]</sup> dated July 18, 2013 for judicial consignment of the subject property filed by respondent with the RTC, docketed as Civil Case No. 86-0-2013; (3) Photocopy of Manager's Check No. 0000300714<sup>[33]</sup> dated September 8, 2014 designating the RTC as payee, in the amount of P2 Million as bond in the consignment complaint; (4) Photocopy<sup>[34]</sup> of Manager's Check No. 0000300714 signed by respondent indicating her receipt of the check on September 14, 2014; (5) Copy of the RTC Order<sup>[35]</sup> dated July 31, 2014 dismissing complainant's consignment complaint on the ground of forum shopping; (6) Atty. Aquino's Letter-Reply<sup>[36]</sup> dated October 7, 2015, clarifying that complainant's Manager's Check was withdrawn by Chua of Grand Pillar for the settlement of the obligation of Lim, who was represented by respondent in Civil Case No. 119-0-2008; (7) Complainant's Demand Letters<sup>[37]</sup> sent to respondent, Chua, and Lim for the return of the amount of her Manager's Check; (8) Atty. Aguila's Letter<sup>[38]</sup> dated October 9, 2015 claiming that Chua received complainant's Manager's Check in good