

## THIRD DIVISION

**[ A.M. NO. MTJ-06-1622, January 27, 2006 ]**

**ENRIQUE ABADESCO, JR., COMPLAINANT, VS. JUDGE JAIME O. RAFER AND CLERK OF COURT FRANCA C. VELASCO, MCTC, TALISAY-LAUREL, BATANGAS, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

By a verified letter-complaint <sup>[1]</sup> received by the Office of the Court Administrator on July 1, 2004, Enrique Abadesco, Jr. (Abadesco) charges respondents, Judge Jaime Rafer (Judge Rafer or the judge), who has in the meantime died, <sup>[2]</sup> and Clerk of Court Franca C. Velasco (Franca), both of the Municipal Circuit Trial Court (MCTC), Talisay-Laurel, Batangas, with misrepresentation and gross misconduct.

The facts that gave rise to the filing of the present administrative complaint are as follows:

On July 6, 1998, Abadesco and Judge Rafer entered into a Contract to Sell <sup>[3]</sup> over a one-hectare lot (the lot) located at Barangay Miranda, Talisay, Batangas and covered by Tax Declaration No. 015-00149 in the name of the judge.

Under the Contract to Sell, Abadesco agreed to purchase the lot for Two Million (P2,000,000) Pesos by paying a downpayment of P500,000 upon execution of the contract and the remaining balance by installments. For his part Judge Rafer agreed to facilitate the subdivision of the lot into individual farm lots and the development of the access road therein.

Abadesco had paid the full purchase price of P2,000,000 and was issued a title therefor. As he was set to take possession of the lot, however, he learned that it had been sold to another person.

Judge Rafer, by letter dated September 27, 1999, <sup>[4]</sup> apologized to Abadesco "for the discrepancy in the location of the one which you like to purchase and the one which is actually conveyed to you."

Nevertheless, the judge offered Abadesco, by the same letter, three options, to wit: (1) retain the lot actually conveyed; (2) ask for an acceptable replacement; and (3) allow him (Judge Rafer) to sell the lot to another so that Abadesco could get his money back plus any reasonable profit derived from the sale.

By reply-letter <sup>[5]</sup> dated October 1, 1999, Abadesco informed Judge Rafer that he would conduct an ocular inspection "of the replacement properties and if I decide to pursue the replacement option, I would like to arrange soonest possible time that

the property be surveyed to determine its exact boundaries."

Whether an ocular inspection was made by Abadesco, the records do not show.

On December 15, 1999, the judge sent Abadesco an Undertaking [6] to replace the title issued in the name of Abadesco and his wife with one "that truly reflects the lot subject matter of the purchase agreement," and should Abadesco decide not to take said lot, he (the judge) would refund the purchase price of P2,000,000 plus interest thereon.

Abadesco immediately made known to the judge, by letter of December 17, 1999, his desire to be refunded the amount of P2,000,000 including interest at the bank rate for time deposit at the time Judge Rafer received the said amount, the refund to be made on or before December 23, 1999, otherwise, he would be constrained to refer the matter to his lawyer for appropriate legal action. [7]

The judge failed to comply with his undertaking to refund the purchase price.

Abadesco and his wife thus filed on August 1, 2000 [8] with the Regional Trial Court (RTC) of Quezon City a complaint [9] against Judge Rafer, for Rescission of Contract with Damages, docketed as Civil Case No. Q-00-41479 (the civil case).

Branch 215 of the Quezon City RTC, by decision [10] of December 21, 2001, rescinded the Contract to Sell and accordingly rendered judgment in favor of Abadesco and his wife, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff Cynthia and Enrique Abadesco, Jr. and against defendant Jaime O. Rafer as follows:

1. Declaring the Contract to Sell dated July 6, 1998 as rescinded and Transfer Certificate of Title No. T-81334 of the Registry of Deeds for Tanauan, Batangas as cancelled;
2. Ordering said defendant to refund to plaintiffs the amount of TWO MILLION PESOS (P2,000,000.00), plus interest thereon at the rate of 12% per Declaring the Contract to Sell dated July 6, 1998 as rescinded and annum computed from the date of the judicial demand on August 1, 2000;
3. Ordering defendant to pay the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages and another FIFTY THOUSAND PESOS (P50,000) as exemplary damages;
4. Ordering defendant to pay the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) as attorney's fees; and
5. Ordering defendant to pay the amount of THIRTY THOUSAND PESOS (P30,000.00) for the costs of suit.

Plaintiffs' other claim for damages are hereby DISMISSED.

Defendant's counterclaims are likewise dismissed for lack of merit.

[11]

The RTC decision having become final and executory, a Writ of Execution was issued and served upon the judge.

In his Sheriff's Report, [12] dated February 2\_\_ (illegible), 2003, Deputy Sheriff Nilo Cabang stated that the judge did not get in touch with him within the given period of compliance with the writ. The Sheriff added, however, that the judge maintained Savings Account bearing No. 2951-0069-07 with the Land Bank of the Philippines, Tanauan Branch with a balance of more than P400,000.

Herein respondent Clerk of Court Franca later issued a Certification dated April 15, 2003 that the above-said Savings Account, which is in her and the judge's name, is a Fiduciary Fund of the MCTC, Talisay-Laurel, Batangas. The bank thus "refused to deliver the amount of the savings account to the Sheriff."

Thus, aside from charging Judge Rafer with misrepresentation and gross misconduct, Abadesco faults Clerk of Court Franca with the same charges in light of her issuance of the above-mentioned Certification, upon the premise that she conspired to frustrate the implementation of the writ of execution.

On the directive of the Office of the Court Administrator (OCA) by 1st Indorsement [13] of July 8, 2004, Judge Rafer filed his Comment [14] on January 13, 2005. Franca too filed hers which was received by the OCA on March 4, 2005. [15]

Judge Rafer denies that the transaction was attended by fraud or misrepresentation, he alleging that it was a case of honest mistake, "a classic example of a mere clerical error committed by a typist in copying a technical description in the plan." As in his Answer to the civil case, he thus heaps the blame on his secretary.

Abadesco, by letter [16] of March 2, 2005 to the OCA, maintains, however, that the judge gave him a title covering a property near ravine, not the title of the lot he had decided to buy.

As for Franca, she maintains that the Land Bank Savings Account is a Fiduciary Fund of the MCTC to which its collections are deposited and cash bonds are withdrawn. She attached a July 9, 2003 Order issued by the Quezon City RTC in the civil case denying a Motion to Declare her, Judge Rafer and Moises O. Reyes of the Land Bank in Contempt of Court for their refusal to deliver to Abedesco the deposit under Savings Account, and finding the said account to be indeed a fiduciary fund. [17]

By Report dated October 14, 2005, the OCA finds Judge Rafer culpable of the charges hurled against him for which it recommends that he be fined P10,000 to be taken from his retirement benefits.

While this court affirms the faulting of the judge, it should, however, be for impropriety, not misconduct as charged.