

THIRD DIVISION

[A.C. No. 4914, March 03, 2004]

**SPOUSES JENELINE DONATO AND MARIO DONATO,
COMPLAINANTS, VS. ATTY. ISAIAH B. ASUNCION, SR.,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This is a complaint for disbarment filed by spouses Jeneline and Mario Donato against Atty. Isaiah B. Asuncion, Sr.

The complaint alleges that on July 22, 1994, complainant spouses and respondent Atty. Asuncion, Sr. executed a Contract to Sell wherein the latter conveyed to the former his parcel of land with an area of 10,776 square meters (or 1.0776 hectare) situated at San Miguel, Pangasinan covered by Tax Declaration No. 34-12256. The parties agreed that the purchase price is in the amount of P187,500.00 payable by installments.

On December 20, 1994, after the complainants had paid the last installment, the parties executed a Deed of Absolute Sale. This document was prepared by respondent wherein he made it appear that the consideration is only P50,000.00 in order to reduce the amount of the corresponding capital gain tax.

More than two years later, or on January 10, 1997, the National Power Corporation (NAPOCOR) filed with the Regional Trial Court (RTC), Branch 46, Urdaneta, Pangasinan, an action for eminent domain, docketed as Civil Case No. U-6293. Among the parcels of land being expropriated was the lot purchased by complainants for which NAPOCOR was willing to pay P3,000,000.00.

Respondent then offered his legal services to complainants and demanded 12% of whatever amount they will receive from NAPOCOR.

When respondent learned that complainants intended to hire the services of another lawyer, he threatened them by filing with the RTC, Branch 45, Urdaneta, Pangasinan Civil Case No. U-6352 for reformation of instrument. In his complaint, he alleged that the contract executed by the parties is not a deed of sale but an equitable mortgage because the price of the lot (P50,000.00) stated in the contract is unusually inadequate compared to NAPOCOR's offer of P3,000,000.00.

The complaint further alleges that in filing Civil Case No. U-6352 for reformation of instrument, respondent "has dragged them to useless and expensive litigation." His act is "contrary to law and morality" which warrants his disbarment.

In his comment on the instant administrative complaint, respondent claimed that

complainants violated the rule on forum shopping. According to him, the issue raised in this administrative complaint and in complainants' answer to his complaint in Civil Case No. U-6352 for reformation of instrument is the same, i.e., "the legality and morality" of the filing of this civil case.

In a Resolution dated February 7, 1998, we referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In her Report and Recommendation dated March 3, 2003, Atty. Rebecca Villanueva-Maala, IBP Hearing Commissioner, made the following findings:

"After a careful study and consideration of the facts and evidence presented, we find respondent to have committed gross misconduct. In the Civil Case No. U-6352 before the RTC, Branch 45, Urdaneta City, for Reformation of Instrument, respondent was not telling the truth when he alleged under paragraph 6 'That although the document is captioned Deed of Absolute Sale, the true intention of the parties is not expressed by reason of mistake on the part of the person who drafted the document, because the instrument should be equitable mortgage x x x.' Between the complainants and the respondent, it is the latter who knows about the law, be it the difference between a Deed of Absolute Sale and an Equitable Mortgage. And because he is the lawyer and he has a law office together with his son, it is presumed that he was the one who prepared the Deed of Absolute Sale wherein the consideration indicated was only P50,000.00. We believed complainants that the Deed of Absolute Sale was prepared by respondent to lessen the amount of capital gain tax. Respondent cannot deny that he was the one who prepared the Deed of Absolute Sale as shown by his letters to Myrna Tugawin (sister of Jeneline Donato) dated 31 August 1994, 1 September 1994 and 20 December 1994. After the lapse of several years, respondent filed the complaint for Reformation of Instrument because he realized that the price paid to him by complainants was unusually inadequate in view of the fact that the same land was being purchased by NAPOCOR for P3,000,000.00.

"The contention of respondent that this administrative complaint is a violation of the rule on 'forum shopping' is without merit. There is 'forum shopping' when as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another (*First Phil International Bank vs. CA*, 252 SCRA 259), or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition (*Chemphil Export & Improt Corp. vs. CA*, 251 SCRA 257)."

and recommended that complainant be suspended from the practice of law for one (1) year.

In its Resolution No. XV-2003-345, the IBP Board of Governors adopted and approved the Report of Commissioner Maala with the recommendation that respondent be suspended from the practice of law for only six (6) months.

We sustain the finding of the Hearing Commissioner that respondent was not telling