

SECOND DIVISION

[A.M. No. RTJ-99-1520, November 22, 2000]

REIMBERT C. VILLAREAL, COMPLAINANT, VS. JUDGE ALEJANDRO R. DIONGZON, RTC BRANCH 11, CALUBIAN, LEYTE, RESPONDENT.

D E C I S I O N

BUENA, J.:

Before us is a letter-complaint dated February 16, 1999 filed by Reimbert C. Villareal against Judge Alejandro R. Diongzon of the Regional Trial Court at Calubian, Leyte, Branch 11. The acts complained of happened while Judge Diongzon was still the judge of the 11th Municipal Circuit Trial Court at Villaba-Tabango, Leyte.

The antecedent facts of the case follow:

Complainant owns three (3) parcels of corn and coconut lands located in Mahanglad, Villaba, Leyte. On three (3) occasions, these parcels of land were mortgaged by complainant to Felix Sy, as evidenced by a first "Real Estate Mortgage" for a consideration of P20,000.00 executed on June 11, 1984,^[1] a second mortgage for a consideration of P30,000.00 executed on October 31, 1984,^[2] and a third mortgage for a consideration of P61,000.00 executed on March 26, 1987.^[3] All of these documents were notarized by notary public Diosdado V. Omega and they were all signed by Rosita Sy for Felix Sy.

On October 10, 1988, a "Deed of *Pacto de Retro* Sale" involving the same parcels of land was executed by complainant Reimbert C. Villareal and his wife, Dale Y. Villareal as *vendors a retro*, and Felix Sy as *vendee a retro*, for a consideration of One Hundred Fifty Thousand Pesos (P150,000.00).^[4] The document was notarized by respondent, then municipal circuit trial court judge, in his capacity as notary public *ex officio*.

Sometime in February 1995, complainant with some companions gathered coconuts from the land subject of the *pacto de retro* sale. Complainant, among others, was subsequently charged with qualified theft by Rosita Sy. The case was filed in the 11th Municipal Circuit Trial Court of Villaba-Tabango, Leyte and docketed as Crim. Case No. 3007. The case, however, was amicably settled with complainant being allowed to "redeem the property."^[5]

Thereafter, a Complaint for Annulment of Sale with *Pacto de Retro*, Accounting and Damages with Preliminary Injunction dated April 9, 1995 was filed by Spouses Reimbert Villareal and Dale Villareal against Rosita Sy and Felix Sy docketed as Civil Case No. PN-0172.^[6] However, this case was dismissed in an order dated April 20, 1998,^[7] for failure of the complaint to specify the amount of moral and exemplary

damages sought. The motion for reconsideration filed by plaintiffs was denied in the order dated June 15, 1998.^[8]

Alleging irregularity in the execution of the deed of *pacto de retro* sale, complainant Reimbert C. Villareal filed an administrative complaint against Judge Alejandro Diongzon on March 5, 1999, thus:

"Bogo, Cebu
16 February 1999

"THE HONORABLE COURT ADMINISTRATOR
OFFICE OF THE COURT ADMINISTRATOR
SUPREME COURT OF THE PHILIPPINES
Padre Faura, Metro Manila

"Your Honor:

"This is to file an administrative complaint against former MTC Judge of Villaba, Leyte, HON. ALEJANDRO R. DIONGZON, now RTC Judge of Calubian, Leyte.

"The complaint is basically that Judge DIONGZON, who was an MTC Judge, notarized a Deed of Pacto de Retro Sale, a machine copy of which is attached as ANNEX `A'. I, the *vendor a retro*, was present when he allowed Rosita Sy to sign for Felix Sy, *vendee a retro*. When I inquired from him he barely said that Rosita Sy is also Felix Sy.

"To make the matter detrimental to my interest, I discovered lately that the document also signed by FELIX SY and the undersigned complainant was previously of (sic) that (sic) a Real Estate Mortgage, notarized by Diosdado V. Omega, a copy of the document is attached herewith as ANNEX `B'. Judge Diongzon, however, changed the previous document of Real Estate Mortgage to that of Deed of Pacto de Retro Sale.

"Consulting a lawyer, I was informed that there is a big difference between a Real Estate Mortgage and that of a Deed of Pacto de Retro Sale. By the false representation of Judge Diongzon, I am now facing a criminal case for qualified theft since I harvested coconuts from the land previously under Real Estate Mortgage but was changed by Judge Diongzon as Deed of Pacto de Retro Sale.

"As a Regional Trial Court Judge, he should have informed me of the difference between the two documents. As a lawyer, he should not have allowed Rosita Sy to sign for Felix Sy. Later on, the document shall be faulty for the signatory was not the very same person who signed the document.

"It is hoped that Judge Diongzon be made to answer for his actuations as a Municipal Trial Court (sic) Judge of Villaba, Leyte. If he is promoted to that of an RTC Judge, he may have the same previous actuations when he was an MTC (sic) Judge.

"An immediate investigation of this administrative complaint is highly appreciated.

"Thank you and Mabuhay!

"Very truly yours,

(Sgd.) REIMBERT C. VILLAREAL

REIMBERT C. VILLAREAL

Complainant"[9]

Per its 1st Indorsement dated June 28, 1999 the Office of the Court Administrator referred the letter-complaint of Villareal to Judge Diongzon for comment.

In the Comment of Judge Diongzon, he vehemently denied the charges against him. He alleged, among other things, the following: that complainant was familiar with Felix Sy, having dealt with him previously, through Rosita Sy, the representative of the latter; that the deed of *pacto de retro* sale was executed at the instance of the complainant and his wife; that he did not change the deed of Real Estate Mortgage to a deed of Sale with *Pacto de Retro*; that he did not have a hand in the preparation of the latter document but the Clerk of Court of the MCTC, Villaba-Tabango, Leyte; that it was complainant and Rosita Sy who provided the terms and conditions of the deed of Sale with *Pacto de Retro* to the said Clerk of Court; that he notarized the said document upon the urging of the complainant who needed the money for his business; that the charge was already barred by laches.

Respondent judge, meanwhile, questioned why complainant waited eleven (11) years before writing the letter-complaint. He did not believe the reason given, i.e., that complainant was facing a criminal case for Qualified Theft of coconuts from the three parcels of land because of the deed of Sale with *Pacto de Retro*, was true.

He confirmed that a case for Qualified Theft was filed against complainant Villareal before the MCTC at Villaba-Tabango, Leyte where he was the Presiding Judge at the time, and that he denied the motion to dismiss filed by Villareal. The probable reason, respondent judge deduced, for the institution of the administrative complaint against him was because he found that there was probable cause to hold the complainant for trial on the merits on the criminal case.

In the Reply to the Comment, complainant stated that he verified from the respondent judge whether a Deed of Mortgage and a Deed of *Pacto de Retro* Sale were the same, and the latter categorically informed him that these two documents were substantially the same, for, in both instances, the owner of the land will pay the amount loaned. By reason of this misrepresentation, complainant averred that he was misled into believing that there was no transfer of possession of all the parcels involved in the transaction, and that as a consequence of his mistaken belief he was facing criminal charges for qualified theft.

Villareal denied that Rosita Sy was given a written authority by Felix Sy to sign for the latter at the time of the notarization of the questioned document, and that he influenced respondent judge to notarize the said document. He also mentioned that

there was no truth to the allegation that the question about the contract was raised only after eleven years, as the defect therein was discovered only when he sought legal advice and that immediately thereafter, he filed the complaint.

Reimbert Villareal prayed that the complaint be fully investigated and that after the investigation, sanctions be imposed upon respondent judge.

On August 30, 1999, a compromise agreement was executed between complainant Villareal and Rosita Sy, who was acting in behalf of Felix Sy, in Criminal Case No. P-0657.^[10] This agreement was to be considered as the latter's desistance from further prosecuting the case. The same was made with the approval of Prosecutor Crisologo Bitas of the Office of the Assistant Provincial Prosecutor of Palompon, Leyte.

Embodied in the compromise agreement were the following provisions:

The complainant would pay Rosita Sy Three Hundred Thousand Pesos (P300,000.00) as the consideration to cancel the Deed of *Pacto de Retro* Sale which was executed on October 10, 1988, the genuineness and due execution of which he admitted and confirmed, and he would take immediate possession of the parcels of land described in the Deed of *Pacto de Retro* Sale after making the aforementioned payment.

Rosita Sy, on the other hand, would reconvey the properties described in the Deed of *Pacto de Retro* Sale, and would withdraw the case for qualified theft and the case for civil liabilities of the accused related to Criminal Case No. P-0657.

On December 8, 1999, a resolution was issued by this Court ordering the referral of this case to the Court of Appeals for investigation.^[11]

Hearings were conducted. Aside from the complainant and respondent judge, Ruben Pecayo, the Clerk of Court of the 11th Municipal Circuit Trial Court of Villaba, Leyte and Rosita Sy were presented as witnesses.

Ruben Pecayo testified that he was the one who prepared the deed of *pacto de retro* sale upon the instruction of respondent judge; that he prepared the document in his office; that he asked Reimbert Villareal (herein complainant) and Rosita Sy what the terms and conditions of the document would be; that when the document was presented to Villareal and Sy, respondent judge asked them, "*Husto na ni?*" (Is this what you want?) to which Villareal and Sy replied, "That is already o.k."; that respondent judge then let them sign the document; that when it was Rosita Sy's turn to sign, respondent judge asked her about Felix Sy's whereabouts but the former said that she would be the one to sign for Felix Sy because she had a letter of authorization from him; that Villareal said that in the other documents, which he executed in favor of Felix Sy, it was Rosita Sy who signed for Felix Sy; that when the functions of ex-officio notary public were divested from MTC judges, the notarial register of their office was surrendered to the Regional Trial Court; that he did not remember Judge Diongzon explaining to Reimbert Villareal the difference between a *pacto de retro* sale and a mortgage.

When called to testify, Rosita Sy said that complainant is her cousin; that she and Villareal went to the office of Judge Diongzon to prepare a deed of *pacto de retro*

sale; that it was Ruben Pecayo who prepared the document; that she and Villareal furnished Pecayo with the terms and conditions of the deed of *pacto de retro* sale; that complainant did not object when she signed for Felix Sy; that she was given a written authority by Felix Sy.

When the hearings were terminated, both parties were directed to submit their memoranda.

In addition to the allegations in the complaint and reply to the comment, complainant Villareal in his memorandum stated that respondent judge, in allowing Rosita Sy, who is of Chinese citizenship, to sign for Felix Sy without being authorized by law nor by a public instrument such as a Special Power of Attorney, violated the Code of Conduct and Ethical Standards for Public Officials and Employees.

In his memorandum, respondent judge Diongzon added that the administrative charge against him was absurd because "the Deed of Pacto de Retro Sale that complainant claimed to have been anomalously executed before (him) is the very document that complainant later on admitted and confirmed as having been genuinely and duly executed. This inconsistent attitude of complainant towards Annex "A" of the letter-complaint is unmistakably impressed on the so-called Compromise Agreement (Exh. 1 - respondent)..."^[12]

He likewise added that the Compromise Agreement may be regarded as illegal because it somehow traverses the basic rule of criminal procedure that criminal cases cannot be the subject of compromise agreements. If the compromise agreement would be considered illegal then the parties thereto are in *pari delicto* and the complainant and his lawyer cannot now be allowed to abandon, withdraw and deny their acts of admitting, and confirming the genuineness and due execution of the questioned Deed of *Pacto de Retro* Sale. On the other hand, if the said agreement would be regarded as valid, then the principle of estoppel by deeds operates against complainant.

Associate Justice Oswaldo D. Agcaoili of the Court of Appeals, on September 25, 2000, submitted his report and recommendation.

In a nutshell, complainant charges respondent judge with:

- (1) dishonesty by misrepresenting to complainant that a deed of mortgage is the same as a *pacto de retro* sale, and
- (2) unauthorized notarization of a deed of sale with *pacto de retro* which is a private document.

Anent the first charge, we do not find that respondent judge misled the complainant about the true nature of the subject document when he (Judge Diongzon) was asked whether a Deed of Mortgage and a Deed of *Pacto de Retro* Sale were the same. Complainant never even asked Judge Diongzon to differentiate the two documents.

Ruben C. Pecayo testified thus:

"Justice Agcaoili