



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 5, 2020** which reads as follows:*

“A.C. No. 10611 (Formerly CBD Case No. 15-4723) – LYN E. SEDANO, complainant, versus ATTY. ANTONIO O. BENDITA, respondent.

This is an administrative complaint¹ for dishonesty, grave misconduct, conflict of interest, and violations of the Code of Professional Responsibility (CPR) filed against respondent, Atty. Antonio O. Bendita (Atty. Bendita), before the Integrated Bar of the Philippines (IBP), SOCSARGEN Chapter.

The Case

Complainant, Lyn E. Sedano (Sedano) alleged that she was a real estate broker. Sometime in April 2013, Sedano was introduced to Atty. Bendita through her fellow broker, Rodolfo Palabrica (Palabrica), in relation to an available piece of land in Surallah, South Cotabato owned by a certain Noble family. Atty. Bendita, who was then the Vice Mayor of the Municipality of Surallah, South Cotabato, acted as counsel for the interested buyer of the property, NV VOGHT Corporation Energy One Incorporated (NV VOGHT). Sedano alleged that in a later meeting attended by her, Palabrica, another real estate agent, Atty. Bendita, a representative of NV VOGHT, and the owner of the land, the parties agreed that the buyer will purchase the property at the price of ₱550,000.00 per hectare, excluding the brokers' fees and the paid-up price.²

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¹ *Rollo*, pp. 3-11.

² *Id.* at 5.

Sedano claimed that Atty. Bendita requested her and the other brokers to help him “materialize the transaction,” and assured them of “[w]hatever proceeds [the] transaction may earn.”³ She further claimed that the final selling price of the property went up to ₱800,000.00 per hectare or a total of ₱6.4 Million. NV VOGHT paid half of the purchase price in the amount of ₱3.2 Million on August 1, 2013, when Atty. Bendita had already assumed office as Municipal Mayor, while the second half was paid in November 2013. The vendor allegedly received only ₱1.2M from this, with Atty. Bendita purportedly keeping the ₱2 Million difference as a result of the jacked up price of ₱800,000.00 per hectare. According to Sedano, Atty. Bendita did not honor his promise to give her and the other real estate agents their share of the excess from the purchase price.⁴

Sedano further averred that she was given a Special Power of Attorney (SPA) so she could process the transfer of the title of the property to NV VOGHT. She claimed that for this purpose, NV VOGHT issued two checks in the name of Atty. Bendita for a total amount of ₱500,000.00. Sedano further claimed that she spent ₱100,000.00 for the transfer of the title of the property to NV VOGHT and for its conversion from agricultural to industrial land. Out of this expense, Atty. Bendita allegedly only reimbursed her with ₱50,000.00.⁵

Sedano sent to Atty. Bendita a demand letter dated December 23, 2013, but the same was ignored.⁶

In his Answer⁷ before the Court, Atty. Bendita denied ever contacting Palabrica and about any meeting attended by him, Sedano, and other people, where NV VOGHT and the Noble family allegedly agreed for the sale of the latter’s property in the amount of ₱550,000.00 per hectare. Atty. Bendita denied that NV VOGHT engaged his services for the said sale and averred that any payment made by the company was made directly to the Noble family. He likewise denied ever knowing about the broker’s fees Sedano and her co-brokers had agreed to with the landowner. Atty. Bendita asserted that Sedano merely filed this present case against him because she failed to collect from the landowner, but that she was not entitled to any broker’s fee as she was not a duly licensed real estate broker.⁸

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³ Id.

⁴ Id. at 6-8.

⁵ Id. at 7-9.

⁶ Id. at 9.

⁷ Id. at 50-60.

⁸ Id. at 50-57.

Atty. Bendita, however, admitted about the checks NV VOGHT issued in his name for the processing of the title of the property. He explained that this was done for mere convenience as NV VOGHT did not have a principal place of business in Surallah, South Cotabato. The money was issued in his name as trustee, to be released to Sedano as the need arises by virtue, in turn, of the SPA executed in her name.⁹

The IBP's Report and Recommendation

In its Report and Recommendation¹⁰ dated December 19, 2017, the IBP-Commission on Integrity and Bar Discipline (CIBD) found that Sedano failed to substantiate her claim of unpaid broker's fees against Atty. Bendita. The IBP-CIBD, however, found that Atty. Bendita was engaged in unauthorized practice of law when he acted as counsel for NV VOGHT during the sale transaction. Citing Section 90 of Republic Act No. (RA) 7160, or the *Local Government Code of 1991* (LGC), the IBP-CIBD held that Atty. Bendita should have recused himself from participating in the perfection of the sale after he was elected as Municipal Mayor. His failure to do so constituted a violation of Rule 1.01 and Canon 7 of the CPR.¹¹

Consequently, the IBP-CIBD recommended that Atty. Bendita be suspended from the practice of law for six (6) months.¹²

The IBP Board of Governors issued a Resolution¹³ on July 12, 2018, which resolved to adopt and approve the IBP-CIBD's Report and Recommendation *in toto*.

Atty. Bendita filed a partial motion for reconsideration of the IBP's Resolution. He maintained that he was still the Vice Mayor when he acted as counsel of NV VOGHT before his assumption to the Office of the Municipal Mayor on June 30, 2003. Thereafter, he insisted that he no longer participated actively in the transaction. If payments were made by NV VOGHT to the Noble family during his incumbency as Municipal Mayor, Atty. Bendita asserted that it was merely on account of his duty as Municipal Mayor to know about the final phase of the sale, considering that the property was within Surallah, South Cotabato where he was then serving as the local chief executive.

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⁹ Id. at 52.

¹⁰ Id. at 339-343. Rendered by Commissioner Sherwin C. De Joya.

¹¹ Id. at 341, 343.

¹² Id. at 343.

¹³ Id. at 337.

In a Resolution¹⁴ dated June 17, 2019, the IBP resolved to deny the partial motion for reconsideration on the ground of lack of new arguments adduced which would justify the reversal of its previous resolution.

The Court's Ruling

The Court affirms the findings of the IBP.

The Court notes at the outset that while Atty. Bendita initially denied in his Answer that he ever served as counsel of NV VOGHT, he eventually admitted during the mandatory conference and in his partial motion for reconsideration that he was, for a time, the counsel of NV VOGHT. In this regard, the Court agrees with Atty. Bendita in his argument that there was no prohibition for him to engage in or practice his legal profession at the time that he was serving as Vice Mayor of Surallah, South Cotabato. Section 90(b) of RA 7160 expressly allows members of the *sanggunian* to practice their profession. For lawyers, in particular, the authority is subject to the limitations provided for under the Section, to wit:

SECTION 90. *Practice of Profession.* — x x x

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: *Provided*, That sanggunian members who are also members of the Bar shall not:

- (1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;
- (2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;
- (3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and
- (4) Use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.

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¹⁴ Id. at 374-375.

The Court, in *Catu v. Rellosa*¹⁵ (*Catu*), explained that unlike governors, city mayors and municipal mayors, members of the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sanggunian bayan* are required to hold regular sessions only at least once a week. Since the law itself grants them the authority to practice their professions, engage in any occupation or teach in schools outside session hours, there is no longer any need for them to secure prior permission or authorization from any other person or office for any of these purposes.¹⁶

As such, applying Section 90(b) of RA 7160, being the former Vice Mayor of Surallah, South Cotabato during the relevant period when the sale between NV VOGHT and the Noble family was being prepared and perfected, there was no proscription against Atty. Bendita to serve as the counsel of NV VOGHT. Under Section 49 of RA 7160, the Municipal Vice Mayor is the presiding officer of the *Sangguniang Bayan*. As presiding officer, Atty. Bendita was, therefore, a member of the *Sangguniang Bayan*.¹⁷ Further, the circumstances under which he served as the counsel of NV VOGHT did not fall under the certain prohibitions in Section 90(b) of RA 7160.

It became a different matter, however, when Atty. Bendita was elected as Municipal Mayor and assumed the Office on June 30, 2003. At that time, the prohibition for him to engage in his profession came into play as provided for under Section 90(a) of RA 7160, to wit:

SECTION 90. *Practice of Profession.* — (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

x x x x

When he became mayor, he should have desisted already.

Again, in *Catu*, the Court explained that the prohibition in Section 90 (a) of RA 7160 is grounded on the reason that the identified elective local officials are required to render full time service, and hence, must devote all their time and attention to the performance of their official duties.¹⁸

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¹⁵ A.C. No. 5738, February 19, 2008, 546 SCRA 209.

¹⁶ *Id.* at 218.

¹⁷ See *La Carlota City, Negros Occidental v. Rojo*, G.R. No. 181367, April 24, 2012, 670 SCRA 482.

¹⁸ *Catu v. Rellosa*, supra note 15, at 217-218.

The Court, in *Canoy v. Ortiz*,¹⁹ further held that the CPR does allow a lawyer to withdraw his legal services if he is elected or appointed to a public office.²⁰ Statutes such as Section 90(a) of RA 7160 expressly prohibit the occupant of particular public offices from engaging in the practice of law, such as governors and mayors, and in such instance, the attorney-client relationship is terminated.²¹

There was no denying that Atty. Bendita continued to participate in the transaction even after he was elected as Municipal Mayor and duly sworn into office. In his Answer, Atty. Bendita, admitted that NV VOGHT issued checks in his name for the processing of the title of the property. He clarified that the money was issued in his name as trustee and the arrangement was merely for convenience because NV VOGHT did not have a principal place of business in Surallah, South Cotabato. In his partial motion for reconsideration, Atty. Bendita invoked his duties and functions as municipal mayor under Section 444 of the LGC in rationalizing his continued participation in the transaction.

The Court, however, finds Atty. Bendita's explanation unpersuasive. The sale was clearly a transaction between private parties over which the municipality has no principal interests. Section 444(vi) of the LGC, which Atty. Bendita relied upon, speaks of business transactions of the municipality over which the municipal mayor shall exercise control and supervision, subject to the authorization by the *Sangguniang Bayan*. It would be an overstretch to include private sales into what Section 444(vi)²² contemplates, unless these are connected to a program, project, service, or activity of the municipality. The mere fact that the property involved is situated

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¹⁹ A.C. No. 5485, March 16, 2005, 453 SCRA 410.

²⁰ Id. at 419, citing CODE OF PROFESSIONAL RESPONSIBILITY, Rule 22.01(f).

²¹ Id. at 419-420, citing R. Agpalo, THE CODE OF PROFESSIONAL RESPONSIBILITY (1st ed., 1991), at 299.

²² SECTION. 444. *The Chief Executive: Powers, Duties, Functions and Compensation*. - (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

x x x x

(vi) Upon authorization by the sangguniang bayan, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;

x x x x (Underscoring supplied)

in the municipality is too flimsy a reason, if not altogether irregular, for a municipal mayor to devote his time into the subject sale transaction.

The Court finds that the more logical reason why Atty. Bendita continued to participate in the whole sale transaction between NV VOGHT and the Noble family was because his professional relationship with NV VOGHT had not been terminated even after he had assumed office as Municipal Mayor. Up until then, he was involved in the process on behalf of his client, NV VOGHT. Hence, his argument that his act of assisting NV VOGHT during the final phase of the sale did not constitute a practice of his profession as he was not giving legal advice or legal services is unconvincing. Suffice it to state, the engagement of Atty. Bendita as counsel by NV VOGHT, as well as his being appointed as trustee with regard to handling the money used for processing the transfer of title, was for the purpose of having the interests of NV VOGHT protected. Indeed, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law.²³

All told, the failure of Atty. Bendita to comply with Section 90(a) of RA 7160 constitutes a violation of his oath as a lawyer: to obey the laws.²⁴ Lawyers are servants of the law, *vires legis*, men of the law. Their paramount duty to society is to obey the law and promote respect for it. To underscore the primacy and importance of this duty, it is enshrined as the first canon of the CPR,²⁵ to wit:

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

At the same time, for not living up to his oath as well as for not complying with the exacting ethical standards of the legal profession, Atty. Bendita failed to comply with Canon 7 of the CPR²⁶:

CANON 7.— A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

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²³ *Cayetano v. Monsod*, G.R. No. 100113 September 3, 1991, 201 SCRA 210, 213, citing *State ex. rel. Mckittrick v. C.S. Dudley and Co.*, 102 S.W. 2d 895, 340 Mo. 852.

²⁴ See *Catu v. Rellosa*, supra note 15, at 220.

²⁵ *Id.*

²⁶ *Id.*

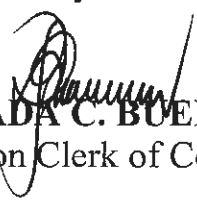
In this regard, following prevailing jurisprudence²⁷ where there has been a finding of unauthorized practice of law against the respondents therein, the Court deems it appropriate in this case to impose upon Atty. Bendita a suspension from the practice of law for six (6) months.

WHEREFORE, the Court finds Atty. Antonio O. Bendita **GUILTY** of violating Rule 1.01 and Canon 7 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for a period of six (6) months effective from his receipt of this Resolution. He is sternly **WARNED** that any repetition of similar acts shall be dealt with more severely.

Let a copy of this Resolution be furnished the Office of the Bar Confidant and entered into the records of respondent Atty. Antonio O. Bendita. The Office of the Court Administrator shall furnish copies to all the courts of the land for their information and guidance.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *Oct. 12, 2020*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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²⁷ See *Catu v. Rellosa*, supra note 15; see also *Yap-Paras v. Paras*, A.C. No. 5333, March 13, 2017, 820 SCRA 116 and *Tan v. Gumba*, A.C. No. 9000, January 10, 2018, 850 SCRA 123.

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