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[A.C. No. 4500. April 30, 1999]

BAN HUA U. FLORES, *complainant, vs.* **ATTY. ENRIQUE S. CHUA,** *respondent.*

SYNOPSIS

Complainant Ban Hua U. Flores sought the disbarment of respondent Atty. Enrique S. Chua, a practicing lawyer in the City of Bacolod for various offenses amounting to malpractice, gross misconduct, violation of the lawyer's oath, the Code of Professional Conduct and Responsibility, as well as the provisions of the laws of the Republic of the Philippines. The Supreme Court ordered the disbarment of respondent upheld the findings of facts and conclusion of culpability of the Investigating Commissioner of the Integrated Bar of the Philippines. The misconduct of respondent, according to the Court, which the case has unfolded, was grave and serious that brought dishonor to the legal profession. Committed in succession and within a short time, the misconduct exposes a habit, attitude, and mindset not only to abuse one's legal knowledge or training, but also to deliberately defy or ignore known virtues and values which the legal profession demands from its members.

Respondent was held guilty of gross misconduct and was ordered disbarred from the practice of law and his name stricken off the Roll of Attorneys.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; THE MISCONDUCT OF RESPONDENT IS GRAVE AND SERIOUS THAT BRINGS DISHONOR TO THE LEGAL PROFESSION; COMMITTED IN SUCCESSION AND WITHIN A SHORT TIME, THE MISCONDUCT EXPOSES A HABIT, ATTITUDE, AND MINDSET NOT ONLY TO ABUSE ONE'S LEGAL KNOWLEDGE OR TRAINING, BUT ALSO TO DEFY OR IGNORE KNOWN VIRTUES AND VALUES WHICH THE LEGAL PROFESSION DEMANDS FROM ITS MEMBERS; IMPOSITION OF THE SUPREME PENALTY OF DISBARMENT

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IS IN PROPER ORDER. — We fully agree with the Investigating Commissioner in his findings of facts and conclusion of culpability, and even in his own lament that the recommended penalty "would even seem light." Indeed, the misconduct of respondent, which this case has unfolded, is grave and serious that brings dishonor to the legal profession. Committed in succession and within a short time, the misconduct exposes a habit, attitude, and mindset not only to abuse one's legal knowledge or training, but also to deliberately defy or ignore known virtues and values which the legal profession demands from its members. In respondent's notarization of a forged deed of sale, we see not just an act of generosity lavishly extended. We see his active role to perpetuate a fraud, a deceitful act to prejudice a party. He did not deny knowing the supposed vendor. As a matter of fact, he certified in the acknowledgment that he knew the vendor and knew him to be the same person who executed the document. When he then solemnly declared that such "vendor" appeared before him and acknowledged to him that the document was the vendor's free act and deed despite the fact the "vendor" did not do so as his "signature" was forged, respondent deliberately made false representations. It must be stressed that under Section 1 of Public Act No. 2103, a notary public, like herein respondent, "shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed." The purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former. It may be added, too, that only by such personal appearance may the notary public be able to ascertain from the acknowledging party himself that the instrument or document is his own free act and deed. Needless to state, the personal appearance and acknowledgment by the party to the document are the core of the ritual that effectively convert a private document into a public document, making it admissible in court without further proof of its authenticity. The role then of the notary public in this ritual cannot be taken lightly. Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands him not

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to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession. In *Maligsa vs. Cabanting*, we emphatically pronounced: As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct. Simply put, such responsibility is incumbent upon and failing therein, he must now accept the commensurate consequences of his professional indiscretion. By his effrontery of notarizing a fictitious or spurious document, he has made a mockery of the legal solemnity of the oath in an *Acknowledgment*. In said case, respondent Cabanting notarized a forged deed of quitclaim. Considering also his previous misconduct for which he was suspended from the practice of law for six months, we ordered him disbarred from the practice of law. In the instant case, respondent Enrique S. Chua also notarized a forged deed of sale. It must be recalled that in *Lee vs. Abastillas* and *Abastillas vs. Chua*, we held respondent Enrique Chua "administratively liable . . . for violation of Rule 1.01 of the Code of Professional Responsibility for allegedly bribing Judge Abastillas"; and, accordingly, we "STERNLY WARNED [him] that a repetition of similar act or acts or violation committed by him in the future [would] be dealt with more severely." Respondent Chua should, on this score alone, deserve a similar deal with Cabanting. But, considering the other items of his misconduct enumerated in the Report of the Investigating Commissioner, which in their totality brought dishonor to the legal profession, for more reasons must we visit upon respondent the most severe permissible penalty. What we said in *Maligsa vs. Cabanting* bears repeating: A lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.

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DECISION

PER CURIAM:

In its Resolution No. XIII-98-288 in this Administrative Case, the Board of Governors of the Integrated Bar of the Philippines RESOLVED as follows:

. . . to ADOPT and APPROVE . . . the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution/Decision as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, respondent Atty. Enrique S. Chua is SUSPENDED from the practice of law for three (3) years.

We quote the 21-page Report of the Investigating Commissioner, Atty. Jaime M. Vibar:

THE FACTS AND THE CASE

Complainant Ban Hua U. Flores seeks the disbarment of respondent Atty. Enrique S. Chua, a practicing lawyer in the City of Bacolod (Complaint dated October 11, 1995) for various offenses amounting to "malpractice, gross misconduct, violation of his lawyer's oath, the Code of Professional Conduct and Responsibility, as well as the provisions of the laws of the Republic of the Philippines, to wit:

I. FRAUD AGAINST A DEFENSELESS WIDOW BY THE DEATHBED OF HER DECEASED SPOUSE THROUGH FALSIFICATION AND FORGERY OF PUBLIC DOCUMENT.

II. FOISTING FALSEHOOD AND FABRICATED PUBLIC DOCUMENT TO MOLEST AND HARASS PARTIES CONCERNED AND DEPRIVED THEM OF THEIR PROPERTY RIGHTS TO THEIR PREJUDICE AND DETRIMENT.

III. LIBEL, MISPRESENTATION AND UNLAWFUL ADVERTISEMENT THROUGH THE PREMATURE PUBLICATION OF PORTION OF A QUESTIONABLE DECISION WHICH IS PENDING APPEAL.

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IV. BRIBERY AND CORRUPTION AND BLACKMAIL OF THE JUDICIARY AMOUNTING TO MALPRACTICE.

V. ILLEGAL TAPPING OF CONVERSATIONS IN VIOLATION OF REPUBLIC ACT NO. 4200.

VI. COMMISSION OF PERJURY, FORUM SHOPPING, MISREPRESENTATION, FILING A FALSE SUIT AND MISLEADING THE CLERK OF COURT TO EVADE PAYMENT OF DOCKET FEES.

Respondent filed his comment on the complaint with a countercharge against complainant and counsel, dated January 24, 1996. Respondent denies the charges and alleges that:

1. Grounds I and II, referring to the forgery of the signature on a Deed of Sale notarized by respondent Chua, "are presently the subject of an on-going litigation (Crim. Case No. 12036 or Annex "A" Complaint and SEC Case No. 3328 or Annex "F" or Sec Case No. 520 or Annex "P", Complaint) whose termination or conclusion is far from over, thus it would be premature to impose now any sanction upon the respondent x x x."

2. Grounds III, III-A and III-B "are presently litigated in the Libel Complaint docketed as BC-I.S. No. 93-2801 filed by complainant against the respondent and her (Complainant's) brother x x x and is still awaiting resolution." Said grounds are also intertwined with other pending cases.

3. Grounds IV, IV-A, IV-B and IV-C "are absolutely baseless and false."

4. Other grounds mentioned are not valid and sufficient basis for respondent's disbarment for the issues raised therein are still the subject of pending cases. Such grounds are flimsy and frivolous.

Respondent claims that the cases he is handling and subject of the complaint involve disputes between family members. As he represents the brother of complainant, the present administrative complaint has apparently been filed by complainant to vent her ire for failing to attain what she sought in the pending litigations against respondent's client.

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In the trial of the case, complainant presented testimonial and documentary evidence, including decisions of courts and pleadings filed therein while respondent opted to submit the case for decision only on the basis of documents. He submitted resolutions, pleadings and orders issued in other pending cases adverted to in the complaint, to prove that the issues raised in the disbarment case are still the subject of pending actions, or that the complaint has no legal and factual basis.

Let us examine the facts as established by the evidence adduced by the parties.

GROUND I. On the charge that respondent Chua was guilty of falsification and criminal activities in connection with his office as lawyer and notary public.

Complainant presented evidence on the notarization by respondent Chua of a Deed of Sale allegedly executed on December 5, 1989 (Exhibit "E"), or one (1) day before the death of Chua Beng, one of the owners of the property. In the transcript of stenographic notes taken in Criminal Case Nos. 12037 and 12036, a proceeding against respondent Chua for falsification and notarization of a falsified document, RTC-Bacolod City, Branch 53, it is revealed that during the wake of Chua Beng, Silvina Chua, the wife of the deceased, asked to sign a document by Yu Seng, her husband's helper or assistant, who represented to her that said document she signed was a deed of sale which conveyed a property of her husband located in Nandalagan, Bacolod City, containing 344 square meters and evidenced by Transfer Certificate of Title No. 151706. She also found out that her husband's signature was forged. The deed of sale purportedly transferred their property to Yu Seng and Benjamin Laudio.

Silvina Chua gave testimony that her husband Chua Beng could not have signed the deed of sale as they were together all the time prior to his death and she did not see him sign any document (Exhibit "G" at pages 39, *et seq.*) The forgery of the signature of her husband was reported to authorities (Exhibit "G" at page 55) and a fingerprint expert in the person of Police Superintendent Rodolfo Castillo attested to such forgery (Exhibit "F" at page 48 *et seq.*) The forgery and notarization of the document containing the said forged signature of Chua Beng became the basis of a criminal prosecution for falsification of notarial document against Atty. Chua, the above-mentioned Criminal Case Nos. 12037 and 12036.

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Respondent Chua has not rebutted evidence presented on his role in notarizing a deed of sale where the signatory did not appear before him as, in fact, the signature was a forgery. The "Acknowledgment" in the deed of sale states that Chua Beng appeared and signed the deed personally before respondent. In his defense, respondent claims that there is a criminal case still pending against him for his participation in the notarization and alleged falsification of the document so the administrative case cannot proceed until the decision is rendered in the criminal case.

GROUND II. On the charge that respondent foisted falsehood and falsification to molest and harass parties concerned to their prejudice and detriment.

The charge relates to the filing of a notice of *lis pendens* in connection with a case filed before the Securitie [*sic*] and Exchange Commission (SEC). It appears that a petition, dated April 6, 1988, was filed by the lawyers Ramon Encarnacion and Alberto de Joya in behalf of UBS Marketing Corporation and Johnny K.H. Uy. Complainant herein and other family members were the respondents. The action was for the "turn over of Books of Accounts, Sums of Money and Damages with Writ of Preliminary Mandatory Injunction." Subsequently, or on April 26, 1995, a notice of *lis pendens* was sent to the Register of Deed of Bacolod City, informing of the filing of a SEC petition, docketed as Case No. 3328. The first page of the petition was altered by obliterating the entry pertaining to the nature of the suit appearing at the upper right hand portion of the caption of the case just below the case number. The complainant testified that the erasure was made to conceal the true nature of the suit and lack of basis of the notice so as to mislead the Register of Deeds into annotating the notice of *lis pendens*. The notice sent to the Register of Deeds, Exhibit "J", Annex "F", Disbarment Complaint, was signed for "Ramon Encarnacion and Associates."

It is further charged that the notice was unlawful and baseless as the owner (SK Realty, Inc.) of the properties subject thereof was not even a party to the SEC petition.

The application for the annotation of the notice of *lis pendens* was denied by the Register of Deeds in a letter dated May 5, 1995, addressed to UBS Marketing Corp. and Johnny KH Uy c/o Atty. Enrique Chua on the ground that the ownership of the titles was never an issue in the case and the registered owner was not a party thereto. Respondent Chua, this time acting for the applicants,

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appealed the denial to the Land Registration Commission (LRC) *en consulta*. However, the LRC Administrator, in a Resolution dated September 21, 1995, denied the appeal, sustaining the ground stated by the Register of Deeds that the notice was not registrable as the registered owner of the affected properties was not a party to the SEC case.

No contrary evidence was presented by respondent.

GROUND III. On the third charge that respondent was guilty of libel, misrepresentation and unlawful conduct by causing the publication and advertisement of a portion of the SEC decision in a newspaper of general and wide circulation in the province, evidence is not disputed that indeed an advertisement/notice and news report came out in the Visayan Daily Star, in its issues of June 6, 1995 and June 9, 1995 (Exhibits "Q" and "R", Annexes "L" and "M") respectively, relating to the decision of the hearing officer in the SEC Case No. 3328 holding complainant and other liable for P68 million. The decision as published included, among others, the cancellation of titles of SK Realty, Inc. and New Challenge Resources, Inc.

In these publications, respondent was always in the forefront, claiming to be the lawyer of the winning parties and paying for the advertisement/notice of the SEC decision. (Annexes "N" and "O").'

Complainant testified (TSN February 19, 1997 at page 54 *et seq.*) before this Commission and affirmed that the decision of the hearing officer in SEC Case No. 3328 declared her and others in default and held liable for ₱68 million. Thereafter, Atty. Chua, who was not the counsel of petitioners in the proceedings, caused damage and embarrassment to the [*sic*] them when said respondent instigated and initiated the publication in a newspaper of general and wide circulation in the Visayas, the Visayan Daily Star issue of June 6, 1995, the issuance of the decision with the caption "BUSINESSMEN ORDERED TO PAY ₱68 MILLION PESOS BY THE SECURITIES AND EXCHANGE COMMISSION." The publication reported that Atty. Chua was the counsel of the petitioners. Not content with the news report, respondent Chua himself caused and paid for the publication of a two (2) page notice/advertisement in the Visayan Daily Star in its issue of June 9, 1995, informing the public about the decision of the SEC finding the complainant and others liable for P68 million.

Even non-parties, SK Realty, Inc. and New Challenge Resources were mentioned in the publication (Exhibit "Q", Annex "L", Complaint).

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The SEC decision adverted to in the publications had been appealed to the Commission *en banc*. A copy of the notice of appeal was sent by mail to the counsel of record on June 9, 1995. (Exhibit "V", Annex "P").

While the SEC case was pending appeal, respondent Chua filed a case against SK Realty, complainant herein and others with the Regional Trial Court of Bacolod City, Case No. 95-9051 for "Reconveyance of Property and Cancellation of Titles and/or Recovery of Ownership and Possession of Real Estate with Damages and Accounting." (Annex "Q").

In defense, respondent Chua submitted evidence to show that a complaint for libel filed by Ban Hua Flores against respondent, arising from the publication/advertisement of the decision in SEC No. 3328, was dismissed by the prosecutor's office of Bacolod (Annex "1", Respondent's Manifestation and Submission of Evidence dated February 15, 1997). He further alleged that while complainant filed an administrative complaint against the prosecutors, the said complaint was likewise dismissed for the acts complained of amounted merely to errors of judgment correctible by appeal or a petition for review and not by an administrative proceedings (Annex "3", *Ibid.*). Respondent maintains that the complaint on the publication is, therefore, baseless.

GROUND IV. On the charge that respondent was guilty of bribery, corruption and blackmail of the judiciary, as well as harassment of the prosecution arm through the filing of administrative and criminal cases against them, complainant presented evidence that respondent testified in Administrative Matter No. RTJ-92-863 and Administrative Matter No. RTJ No. 92-880, involving Judge Renato Abastillas and Judge Bethel Moscardon, respectively, whereat respondent Chua allegedly admitted having bribed and/or conspired to bribe then RTC Judge Abastillas in order to obtain a favorable ruling for his clients in Crim. Case Nos. 10009 and 10010. Failing to get a favorable action, respondent Chua "squealed/fabricated Administrative Matter No. RTJ-92-863 against ex-Judge Abastillas."

Complainant further charges respondent of having conspired to bribe Judge Moscardon, which illegal act he admitted in A.M. RTJ-92-880. Complainant also makes the sweeping accusation that respondent Chua has the propensity to either bribe or sue the judges and prosecutors. He is charged of having harassed Provincial Prosecutor Bartolome Facuñal.

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Respondent denies the accusation but admits that he has already been proceeded against and, in fact,sternly warned for his misconduct in giving Judge Abastillas ₱20,000.00 for a case he was handling and for which acts he has already expressed rancor (A.M. No. RTJ-92-863). He emphasizes that the charges he acted irresponsibly by indiscriminately suing or harassing judges and others, while serious, are false and untrue. His actions, in fact, resulted in the dismissal of judges.

Evidence adduced indeed prove that respondent Chua was previously found guilty for misconduct as a lawyer in Administrative Matter No. RTJ-92-863/Administrative Case No. 3815, and where Judge Renato Abastillas was orderd dismissed (Annex "C", Complaint for Disbarment). Respondent was found to have bribed Judge Abastillas and "sternly warned that a repetition of similar act or acts or violation committed by him in the future will be dealt with more severely." In Administrative Matter RTJ-92-880 (In re: Judge Bethel Moscardon), the Honorable Supreme Court directed the Bar Confidant to investigate Atty. Chua's conduct in negotiating with a judge for an increase in rent for his client and further noted that:

> "Thus is not the first time that Atty. Chua was involved in a similar incident. In A.C. No. 3815 Atty. Chua admitted giving ₱20,000.00 bribe to another judge who was ordered dismissed. Atty. Chua was spared from prosecution but he was sternly warned that a repetition of a similar act or acts or violation committed by him in the future would be dealt with more severely."

The Honorable Supreme Court furnished the Department of Justice with a copy of the decision in A.M. RTJ-92-880 for investigation and possible criminal prosecution of persons concerned including respondent herein. A copy of said decision was also endorsed to the Bar Confidant for possible investigation and disciplinary action against respondent.

Complainant further alleges that there is a pattern of conduct on the part of respondent that tends towards the frustration of justice. While not specifically alleged in the complaint, evidence was adduced that respondent resorted to dilatory tactics in the handling of his cases. The attempts to delay and impeded the natural course of justice has not remained unnoticed. In a Comment of the Office of the Solicitor General (Exhibit "Z") filed in CA-G.R. No. 41329, a petition

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to question an order of the trial court which denied the accused petitioner's Motion to Suspend Further Proceedings in a criminal case for Estafa filed in 1988, the Solicitor General revealed that the petitioner therein, who was assisted by Atty. Chua, filed six (6) Motions to Disqualify Private Prosecutor/law firm, three (3) Motions for Reinvestigation, five (5) Motions to Quash/Dismiss/Suspend Proceedings, four (4) Motions to Recall Warrant of Arrest and several motions to inhibit the judges. These motions were all denied or dismissed. Aside from the motions, the accused succeeded in seeking the postponement of the arraignment twenty three (23) times. The filing of the petition in the Court of Appeals was part of the ploy to further delay the proceedings.

The dilatory tactics of respondent Chua has not escaped the attention of the Court of Appeals in a petition for *certiorari* docketed as CA-G.R. No. 38798 (Exhibit "AA"). This petition was filed by respondent Chua to seek the annulment of an Order of the trial court dated August 21, 1995 setting the case for further proceedings on various dates and the annulment of the April 27, 1998 Order which directs Atty. Reyanaldo Depasucat, counsel for the plaintiff, to put in writing his oral manifestation that respondent Chua's client has not honored a subpoena *ad testificandum* and subpoena *duces tecum* previously issued by the court. Petitioner likewise seeks to compel the trial court to dismiss and/or suspend the proceedings in Civil Case No. 7675. The Court of Appeals dismissed the petition but noted that:

> "The petition is utterly without merit and is obviously intended to delay proceedings in the aforesaid civil case.
>
> "The court looks with disfavor at the clear dilatory tactics employed by herein petitioner in delaying the proceedings in Civil Case No. 7635 by bringing the instant petition before this court when private respondent is merely being required to put in writing his oral manifestation that Sy Seng Cho refused to honor the subpoena *duces tecum* requiring him to produce the original of the minutes of the reconciliation meeting of the feuding Uy family of which he is the custodian. Quite obvious is the fact that herein petitioner is merely employing this petition to delay the case and thus delay likewise the motion to cite him for contempt.

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"We will not be a part to the unreasonable and unnecessary delay of the proceedings in Civil Case No. 7635 which has dragged on since 1993 to the detriment of the proper administration of justice and has prolonged the long standing feud of the Uy family.

"We see that there is no valid issues that could arise from the order of the public respondent since the order merely directs counsel for the plaintiff (private respondent) to put in writing his oral manifestation as to the reason for the dishonor by the petitioner of the subpoena x x x."

Respondent claims that he has not caused a delay in the proceedings much less in Case No. 95-9597 or in Criminal Case Nos. 12037 and 12036.

V. On the charge that respondent admitted in the administrative cases as aforesaid that he and his client tapped private conversations and that said acts allegedly violated the Anti-Wiretapping Act, RA No. 4200, no evidence was adduced, independent of what has been stated in the administrative cases, had been adduced by the complainant.

VI. Respondent is further charged of forum shopping for his role as counsel for certain parties in instituting various actions in different judicial and quasi-judicial fora. These cases have the same or similar causes of action and were allegedly instituted to defeat the ends of justice.

The decision of the Regional Trial Court on a motion to dismiss the case entitled "*Johnny K.H. Uy & UBS vs. Sk Realty, et al.*, Civil Case No. 95-9051, RTC-Bacolod City, Branch 43" gives a summary of the cases instituted by respondent Chua in behalf of his clients and finds that there was forum shopping committed, thus:

"x x x defendants alleged that there are three pending cases involving practically the same parties, subject matter and issues. The first is SEC AC Case No. 520 entitled '*UBS Marketing Corporation and Johnny K.H. Uy vs. Ban Hua U. Flores, et al.*' which is an appeal from the decision of the Hearing Officer of the Securities and Exchange Commission (SEC Case No. 3528) to the SEC *En Banc*. The dispositive portion of the appealed decision ordered, among others, the cancellation and annulment of all Certificates of Title in the name of herein defendant S.K.

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Realty, Inc. The present case, likewise, asks for the annulment and cancellation of transfer certificates of title in the name of defendant S.K. Realty, Inc. which properties are the very same properties covered by SEC AC No. 520.

"The second case, entitled '*S.K. Realty, Inc. et al. vs. Securities and Exchange Commission, UBS Marketing Corporation and Johnny K.H. Uy*' is CA-G.R. No. 37451 pending in the Court of Appeals. The issue raised thereto refers to the nullity of the decision rendered in SEC Case No. 3328 which awarded the real properties of S.K. Realty, Inc., to the herein plaintiffs. These properties are the very same subject matter of the present action between the same parties.

"The third case, Civil Case No. 95-8978 entitled '*SK Realty, Inc. vs. Johnny K.H. Uy and UBS Marketing Corporation*' pending in Branch 41 of this Court, is an action for damages due to the Notices of *Lis Pendens* effected by the herein plaintiffs on the real properties of the defendant SK Realty, Inc.

xxx x x x xxx

"Finally it is the contention of plaintiffs that there is no forum shopping in the present case as the defendants even vehemently declared that defendant SK Realty is not and has never been a party to SEC Case Nos. 3318, 520 and 3328, therefore, is a total stranger to the said case. Neither can there be a similarity of causes in the petition with the Court of Appeals and Civil Case No. 95-8975, for the causes of action in these cases are distinct and the reliefs prayed for are different from the present case.

"The denial of defendants' motion to dismiss is what plaintiffs seek for.

"A judicious scrutiny of the evidence on record led this Court to hold that defendants' position, as a whole, is impressed with merit.

"A perusal of the plaintiffs' complaint in the instant case and SEC Case No. 5328 xxx which is now the subject of appeal docketed as SEC Case No. 520, disclosed that the plaintiffs in both instances assert rights founded on substantially the same set of facts giving rise to the same basic issues — breach, on

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the defendants' part, of the 'Family Agreement' reached during the 'Family Reconciliation Meeting' held on February 10, 11 and 12, 1987; and the validity or nullity of the 'Deed of Sale' involving several parcels of land, executed by and between the defendants, to the prejudice of the rights and interest of the plaintiffs.

"While the case at bar is for the recovery of ownership and possession of real properties and on the other hand SEC Case No. 3328 (now pending appeal) involves, *inter alia*, an action for accounting and damages, ostensibly the cause of action in one is different from the other but in the final analysis the same aforementioned basic issues confront these cases.

"One must bear in mind that 'a party cannot, by varying the form of action or adopting a different method of presenting this case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.' (*Aldez Realty, Inc. vs. Court of Appeals*, 212 SCRA 623)

"It is evident that the aforementioned cases hinges on the same essential facts and circumstances. Though the parties impleaded in one are not entirely the same to that (sic) in the other , nevertheless, the same parties represent the same interest in both actions.

"What we have before us is a clear case of forum shopping."

Respondent is thus accused of perjury in falsely certifying in his Complaint, Civil Case No. 95-9051 (Annex "Q"), that there are no pending cases with the same subject matter and cause of action. Likewise, it is charged that respondent, in not specifying the value of the real properties involved in the suit, misled the clerk of court in accepting the complaint without the correct filing fee being paid.

FINDING AND RECOMMENDATION

I. On the first charge (GROUND I) that respondent was guilty of fraud against a person in his deathbed by falsification and forgery of a deed of sale, there is no evidence that he actively conspired with any party, or actively participated, in the forgery of the signature of one Chua Beng, a purported party to the contract. However, complainant's evidence supports the conclusion that the signature of Chua Beng on a Deed of Sale (Exhibit "E") was forged. While the wife, Silvina Chua, admits that she signed a document during

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the wake of her husband, she denies that her husband signed a "Deed of Sale" (ANNEX "E") on 5 December 1989, or one (1) day before her husband's death, concerning a property covered by TCT No. T-151706.

We find the testimony of the wife on the forgery, which is supported by a handwriting expert, as truthful and credible. We cannot ignore the circumstances of the execution of the said deed of sale which purports to have been signed by Chua Beng before a Notary Public one day before his death. We find the statement in the "Acknowledgment" appearing on the second page of the deed stating that Chua Beng personally appeared before the Notary Public is an untruthful statement that amounts to falsification. While we note that there is a criminal case of falsification pending against respondent (Criminal Case No. 12036), the lack of a decision from the trial court on the matter should not dissuade us from making a finding of liability in this administrative proceedings against respondent, as, in fact, we find respondent Chua failed to exercise the required diligence and fealty to his office by attending to the fact that the alleged party, Chua Beng, appeared before him and signed the deed when in truth and in fact said person did not so participate in the execution thereof. Emphatically, this finding does not in any way preempt the trial court on whatever decision it will issue on the criminal cases against respondent Chua.

II. We shall jointly discuss the second ground (Ground II) together with Ground VI, VI-A, VI-B, and VI-C, as said charges emanate from, or is related to, the filing of a case with the Securities and Exchange Commission (SEC Case No. 3328), involving the Uy family members and another case with the civil court (Case No. 95-9051) involving their properties.

Complainant charges respondent Chua, under the second ground of her complaint, of foisting falsehood and falsified a document to obtain a notice of *lis pendens*. We find documentary evidence to sustain the conclusion that indeed a Notice of *Lis Pendens* was filed in relation to SEC Case No. 3328 (Exhibit "J", Annex "F", Complaint), to which was attached a copy of the Petition with page one thereof containing an apparent erasure to omit the statement that it is "For: Turn over of Books of Account, Sums of Money and Damages with Writ of Preliminary Mandatory Injunction." However, the Petition and the Notice of *Lis Pendens* have been prepared and executed by Ramon Encarnacion or his law firm. It does not appear from the

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documents, neither is there credible testimonial evidence, that respondent Chua directly participated in the unlawful acts complained of. The fact that respondent Chua was not the lawyer for the petitioners in the said SEC case is even admitted by complainant in her complaint (Complaint, paragraph 15, page 11).

However, there is evidence that respondent Chua subsequently took action to appeal the denial by the Registry of Deeds of the application for the registration of the Notice of *Lis Pendens* to the Land Registration Commission, which eventually sustained the decision of the former, in a Resolution dated September 21, 1995, which denied the application on the ground that the real party-in-interest in the SEC case, the registered property owner SK Realty, Inc., was not impleaded in the suit.

It also appears that respondent Chua filed a similar action in the civil court while the SEC case was pending adjudication, an action claimed to amount to forum shopping, intended to enable respondent's clients to annotate a notice of *lis pendens* on the titles of the properties which were the same subject of an earlier SEC petition and application for a notice of *lis pendens*. Respondent Chua cannot deny the institution of the civil complaint (Annex "Q", Complaint for Disbarment). The civil complaint, Civil Case No. 95-9051, shows that SK Realty, Inc., which was not a party in the SEC case, was impleaded this time as party-plaintiff. The causes of action and the reliefs sought therein seem to differ from those stated in the SEC case. In the civil case, the plaintiffs seek judgment specifically as follows:

> "1. Declaring null and void the Deed of Absolute Sale (Annex "A") and annulling and cancelling Transfer Certificates of Titles Nos. T-141057; 141058; 141059; 141060; 141061; 141062; 141063; 141064, standing in the name of defendant SK and reverting their ownership and possession to either of the plaintiffs; 2) Directing the defendants to render full and accurate account of income and revenues on the eight (8) parcels of land; 3) finding defendants, jointly and severally, liable for a) attorney's fees x x x b) Moral Damages x x x c) Exemplary Damages x x x d) Nominal Damages x x x and e) Moderate Damages x x x."

The controversy over the sale of, or the titles to, the real properties of the Uy family was, to respondent Chua's thinking, cognizable by the civil court and on the face of the SEC petition filed by another

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lawyer, it is not indicated that a relief for the annulment of titles was being sought. As admitted by complainant herself, SK Realty, Inc. was not a party-litigant in the SEC case, while she is now a party in the civil case and perhaps rightly so considering that an owner of property is an indispensable party.

We cannot, however, ignore the resolution of the trial court in Civil Case No. 95-9051, dated November 9, 1995, which found that while ostensibly the causes of action in the civil action is different from the SEC Case, it held that "in the final analysis the same x x x issues confront these cases." (Exhibit "P" at page 5) and it, therefore, concluded that respondent's clients were guilty of forum shopping.

Indeed, while it would appear that respondent Chua was not the counsel of the petitioners in SEC CASE No. 3328, his action to have a notice of *lis pendens* annotated at the Register of Deeds and his appeal to the LRC indicate his clear knowledge of the pending action. Clearly, while there is no sufficient basis to hold respondent liable for the charge of committing fraud in the filing of notice of *lis pendens* in relation to the SEC case, or for falsification of page one of the SEC petition as attached to the notice, respondent not being privy thereto, we are not prepared, however, to say that he is "off the hook" on the forum shopping charge. As we have earlier pointed out, the pleadings in the SEC case and in Civil Case No. 95-9051 may appear to have different causes of action and parties. But here is the catch. The SEC rendered a decision, dated May 3, 1995, which directed, among others, the cancellation and annulment of "the transfer certificate of titles in the name of Soon Kee Commercial, Inc. if any, the certificate of titles in the name of SK Realty, Inc., if any, and the certificate of titles in the name of New Challenge Resources, if still there is, and all the properties formerly belonging to and in the name of UBS, presently totalling eight (8) lots TCT No. 141057, TCT No. 141058, TCT No. 141059, TCT No. 141060, TCT No. 141061, TCT No. 141062, TCT No. 141063, TCT No. 14106 and reverting them back to UBS Marketing Corporation." The Decision was published and even quoted in the Visayan daily Star, the issue of June 6, 1995, at respondent Chua's behest and expense. The decision was later appealed to the SEC Commission *en banc*. Respondent Chua was undoubtedly aware that while the SEC petition did not make any references to the real properties, the decision of the SEC gave reliefs in relation thereto. Therefore, when respondent filed a complaint, Civil Case No. 95-9051 (Annex "Q", Disbarment complaint), on September 18, 1995, he was aware that the forum shopping prohibition

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could be violated and yet he submitted a "Verification" in his civil complaint, which was for reconveyance and cancellation of titles, that there is no "prior action or proceedings involving the same issues, as herein raised, has been filed with the Court of Appeals or Supreme Court or any other tribunal or agency." He knew that the controversy on the properties was pending with the SEC, or was pending appeal, initiated by SK Realty and New Challenge Resources, Inc., with the Court of Appeals (CA-G.R. No. 37541 and SEC Case No. 520). The fact that the relief granted by the SEC hearing officer has not yet been set aside when respondent instituted the civil case and that he was aware of this fact should be enough reason for him to be made answerable for making false representation and forum shopping. It is also worth noting the fact that when the civil complaint was filed on September 18, 1995, the appeal in Consulta No. 2334, with respect to the Notice of *Lis Pendens*, was still unresolved. The decision of the LRC Administrator came only on September 21, 1995 (Annex "K", Disbarment Case). Ignorance of a pending action on the properties subject of the SEC case cannot, therefore, be invoked by respondent. Respondent is answerable for misconduct under Canon 12.02.

III. On the third ground (Ground III, III-A and III-B) that respondent Chua caused the publication of new reports and paid advertisement/notice about the issuance of a decision by the Securities and Exchange Commission, there is sufficient evidence to sustain complainants charges.

Undeniably, respondent Chua did not act as counsel for any of the parties in the SEC case, although it is safe to say that he represented some of the protagonist in other matters or cases. It is likewise undenied that the decision of the SEC hearing officer in Case No. 3328 was favorable to respondent Chua's clients. Respondent Chua, being a lawyer, should have known that the said decision was appealable. When he published the decision, he courted a possible sanction for contempt. Here, we cannot excuse him from such misconduct for it behooves him to even exert earnest efforts towards the settlement of family disputes and certainly he should be the last to exacerbate and complicate the controversial situation in which family members are embroiled. By his publication, respondents has violated the canons of professional ethics and professional responsibility, particularly Canon 19, 27, 3.01, 13.02, 1.03 and 1.04.

IV. The charges alleged in Ground IV, IV-A, IV-B and IV-C, which imputes to respondent acts of blackmail, harassment of the judiciary,

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arbitrary filing of administrative and criminal cases, and the charges alleged in Ground V, which attributes to respondent the crime of wire tapping private conversations in violation of RA No. 4200 should be dismissed for lack of evidence and for being without basis. Besides, the acts complained of were the subject of Administrative Case No. 95-863 and A.M. No. RTJ-92-880. The decision in said administrative matters will have a bearing on the imposition of the penalty on respondent who has been warned of a stiffer penalty in case another misconduct is committed.

V. The charge alleged in Ground VI-D which assails the allegation of respondent in the civil complaint, paragraph 4 of Annex "Q", Complaint for Disbarment, as a brazen lie should be dismissed for lack of merit. A reading of paragraph 4 of the Complaint shows that when respondent made a statement that "these facts are within the judicial notice of the Court being a settled litigation passed upon with finality by the Supreme Court," he made a reference to a case docketed as *Securities and Exchange Commission vs. Court of Appeals* and *JBS vs. Court of Appeals* reported in 201 SCRA 124. The term "these facts" should not, therefore, be interpreted by complainant as referring to the facts alleged in the complaint or that there was an intention to mislead the trial court by invoking judicial notice of a court decision.

VI. The charge against respondent, stated under Ground VI-E of the complaint, of allegedly misleading the Clerk of Court into accepting the filing of a civil complaint without the proper filing fee being paid should be dismissed for lack of merit. The insufficiency in the payment of filing should better be threshed in the civil case rather than before the Commission. The intent to mislead the Clerk of Court cannot be deduced from the mere fact of filing, although real properties are involved in the case. We think that the charge lacks factual and legal basis.

Finally, the Commission does not wish to see lawyers deeply involving themselves in a fractious and divisive family feud, nay aggravating a controversy by reckless resort to unnecessary legal actions that only tend to frustrate the ends of justice. Instead of working for the amicable settlement or a friendly end to the dispute, lawyers file pleadings, perhaps with the clients' cheers and approval, that only cause delay and impede the normal course of justice until the solution to the family imbroglio has become unreachable. Under Rule 1.04, it is mandated that lawyers "shall encourage (their) clients

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to avoid, end or settle a controversy if it will admit of a fair settlement." It appears that in the family conflicts in which the lawyers involved herein are also active participants, no earnest efforts have been exerted by said lawyers towards that end. It is pathetic that years have been wasted without any end in sight.

While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of a client's cause, the conduct must never be at the expense of truth. (*People v. Susano Blancas*, 45 SCRA 405; *Caballeros vs. Deiparine*, 60 SCRA 136; *Muñoz v. People*, 53 SCRA 190) A lawyer may be disbarred or suspended for any misconduct when he is wanting in moral character, in honesty, probity and good demeanor or unworthy to continue as an officer of the court. (*Nadayag vs. Grageda*, 237 SCRA 202).

In view of our observation and finding that the charges against respondent for forum shopping, committing falsehood, injurious, willful and unprofessional conduct of publishing, or causing the publication, in a newspaper of general circulation, of a pending case, causing undue delay in the court proceedings and for notarizing a document without the party being present, to be supported by evidence and meritorious, it is hereby recommended that respondent be suspended for a total of three (3) years for all his acts of misconduct. Respondent Chua has, by his unprofessional conduct, violated Rules 10.01, 12.02, 12.04 (foisting or commission of falsehood, forum shopping and causing delay in court proceedings), Canon 19 (failing to resort to lawful means in representing client), 27, 3.01, 13.02 (causing undue publication of pending action). Having been previously found guilty of misconduct by the Hon. Supreme Court and warned of a more stern penalty should he commit another breach of the Canons of Professional Responsibility, respondent's penalty would even seem light.

While the counsel for the complainant is not recommended for any disciplinary action, he is, however, advised to take note of the Rules of Professional Conduct (Rule 1.01) which requires him to take the necessary steps aimed at encouraging a fair amicable settlement of the long-running family disputes, brought to light in this administrative proceedings, where he is actively and deeply involved.

We fully agree with the Investigating Commissioner in his findings of facts and conclusion of culpability, and even in his own lament that the recommended penalty "would even seem

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light." Indeed, the misconduct of respondent, which this case has unfolded, is grave and serious that brings dishonor to the legal profession. Committed in succession and within a short time, the misconduct exposes a habit, attitude, and mindset not only to abuse one's legal knowledge or training, but also to deliberately defy or ignore known virtues and values which the legal profession demands from its members.

In respondent's notarization of a forged deed of sale, we see not just an act of generosity lavishly extended. We see his active role to perpetuate a fraud, a deceitful act to prejudice a party. He did not deny knowing the supposed vendor. As a matter of fact, he certified in the acknowledgment that he knew the vendor and knew him to be the same person who executed the document. When he then solemnly declared that such "vendor" appeared before him and acknowledged to him that the document was the vendor's free act and deed despite the fact that the "vendor" did not do so as his "signature" was forged, respondent deliberately made false representations.

It must be stressed that under Section 1 of Public Act No. 2103,[1] a notary public, like herein respondent, "shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed." The purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former.[2] It may be added, too, that only by such personal appearance may the notary public be able to ascertain from the acknowledging party himself that the instrument or document is his own free act and deed. Needless to state, the personal appearances and acknowledgement by the party to the document are the core of the ritual that effectively convert a private document

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[1] Entitled An Act Providing for the Acknowledgment and Authentication of Instruments and Documents Within the Philippine Islands.

[2] *Maligsa v. Cabanting*, 272 SCRA 408, 412 [1997].

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into a public document, making it admissible in court without further proof of its authenticity.[3]

The role then of the notary public in this ritual cannot be taken lightly. Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands him not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession. In *Maligsa v. Cabanting*, we emphatically pronounced:

> As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct. Simply put, such responsibility is incumbent upon and failing therein, he must now accept the commensurate consequences of his professional indiscretion. By his effrontery of notarizing a fictitious or spurious document, he has made a mockery of the legal solemnity of the oath in an *Acknowledgment*.[4]

In said case, respondent Cabanting notarized a forged deed of quitclaim. Considering also his previous misconduct for which he was suspended from the practice of law for six months, we ordered him disbarred from the practice of law.

In the instant case, respondent Enrique S. Chua also notarized a forged deed of sale. It must be recalled that in *Lee v. Abastillas* and *Abastillas v. Chua,*[5] we held respondent Enrique Chua "administratively liable . . . for violation of Rule 1.01 of the Code of Professional Responsibility for allegedly bribing Judge Abastillas"; and, accordingly, we "STERNLY WARNED [him] that a repetition of similar act or acts or violation committed by him in the future [would] be dealt with more severely."

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[3] *Id.*, 413.

[4] *Id.*, 414.

[5] 234 SCRA 29, 50 [1994].

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Respondent Chua should, on this score alone, deserve a similar deal with Cabanting. But, considering the other items of his misconduct enumerated in the Report of the Investigating Commissioner, which in their totality brought dishonor to the legal profession, for more reasons must we visit upon respondent the most severe permissible penalty. What we said in *Maligsa v. Cabanting* bears repeating:

> A lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.

IN VIEW OF ALL THE FOREGOING, we find respondent ENRIQUE S. CHUA guilty of grave misconduct rendering him unworthy of continuing membership in the legal profession. He is thus ordered DISBARRED from the practice of law and his name stricken off the Roll of Attorneys, effective immediately.

Let copies of this Resolution be furnished the Office of the Bar Confidant, which shall forthwith record it in the personal files of respondent; all the Courts of the Philippines; the Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; and all administrative and quasi-judicial agencies of the Republic of the Philippines.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and *Santiago, JJ.,* concur