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FIRST DIVISION

[A.C. No. 4545. February 5, 2014]

CARLITO ANG, *complainant, vs.* **ATTY. JAMES JOSEPH GUPANA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; VIOLATION OF NOTARIAL LAW IS AN INFRACTION WHERE THE LIABILITY ATTACHES NOT ONLY AS A NOTARY PUBLIC BUT ALSO AS A LAWYER.— [T]he Court finds respondent administratively liable for violation of his notarial duties when he failed to require the personal presence of Candelaria Magpayo when he notarized the Affidavit of Loss which Candelaria allegedly executed on April 29, 1994. Section 1 of Public Act No. 2103, otherwise known as the Notarial Law x x x [requires] that the party acknowledging must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents. In the case at bar, the *jurat* of the Affidavit of Loss stated that Candelaria subscribed to the affidavit before respondent on April 29, 1994, at Mandaue City. Candelaria, however, was already dead since March 26, 1991. Hence, it is clear that the *jurat* was made in violation of the notarial law. Indeed, respondent averred in his position paper before the IBP that he did not in fact know Candelaria personally before, during and after the notarization thus admitting that Candelaria was not present when he notarized the documents. x x x A notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity. It devolves upon respondent to act with due care and diligence in stamping fiat on the questioned documents. Respondent's failure to perform his duty as a notary public resulted in undermining the integrity of a notary public and in degrading the function of notarization. Hence, he should be liable for his infraction, not only as a notary public but also as a lawyer. 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

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of the legal solemnity of the oath in an acknowledgment or *jurat* is sacrosanct. Simply put, such responsibility is incumbent upon respondent and failing therein, he must now accept the commensurate consequences of his professional indiscretion.

2. ID.; ID.; ID.; WHERE VIOLATION OF NOTARIAL LAW CONSTITUTES MISCONDUCT AS WELL.— Respondent likewise violated Rule 9.01, Canon 9, of the Code of Professional Responsibility which provides that "*[a] lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing*." x x x In merely relying on his clerical staff to determine the completeness of documents brought to him for notarization, limiting his participation in the notarization process to simply inquiring about the identities of the persons appearing before him, and in notarizing an affidavit executed by a dead person, respondent is liable for misconduct. Under the facts and circumstances of the case, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year are in order.

APPEARANCES OF COUNSEL

Jes Gal Sarmiento for complainant.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review under Rule 139-B, Section 12(c) of the Rules of Court assailing Resolution Nos. XVII-2005-141[1] and XVIII-2008-698[2] of the Board of Governors of the Integrated Bar of the Philippines (IBP). The IBP Board of Governors found respondent Atty. James Joseph Gupana administratively liable and imposed on him the penalty of suspension for one year from the practice of law and the

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[1] *Rollo*, Vol. I, p. 462.

[2] *Rollo*, Vol. III, p. 67.

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revocation of his notarial commission and disqualification from reappointment as notary public for two years.

The case stemmed from an affidavit-complaint[3] filed by complainant Carlito Ang against respondent. Ang alleged that on May 31, 1991, he and the other heirs of the late Candelaria Magpayo, namely Purificacion Diamante and William Magpayo, executed an Extra-judicial Declaration of Heirs and Partition[4] involving Lot No. 2066-B-2-B which had an area of 6,258 square meters and was covered by Transfer Certificate of Title (TCT) No. (T-22409)-6433. He was given his share of 2,003 square meters designated as Lot No. 2066-B-2-B-4, together with all the improvements thereon.[5] However, when he tried to secure a TCT in his name, he found out that said TCT No. (T-22409)-6433 had already been cancelled and in lieu thereof, new TCTs[6] had been issued in the names of William Magpayo, Antonio Diamante, Patricia Diamante, Lolita D. Canque, Gregorio Diamante, Jr. and Fe D. Montero.

Ang alleged that there is reasonable ground to believe that respondent had a direct participation in the commission of forgeries and falsifications because he was the one who prepared and notarized the Affidavit of Loss[7] and Deed of Absolute Sale[8] that led to the transfer and issuance of the new TCTs. Ang pointed out that the Deed of Absolute Sale which was allegedly executed by Candelaria Magpayo on April 17, 1989, was antedated and Candelaria Magpayo's signature was forged as clearly shown by the Certification[9] issued by the Office of the Clerk of Court of the Regional Trial Court (RTC) of Cebu. Further, the certified true copy of page 37, Book No. XII, Series of 1989 of respondent's Notarial Report indubitably showed

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[3] *Rollo*, Vol. I, pp. 1-7.

[4] *Id.* at 8-10.

[5] *Id.* at 9.

[6] *Id.* at 11-20.

[7] *Id.* at 23.

[8] *Id.* at 21-22.

[9] *Id.* at 24.

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that Doc. No. 181 did not refer to the Deed of Absolute Sale, but to an affidavit.[10] As to the Affidavit of Loss, which was allegedly executed by the late Candelaria Magpayo on April 29, 1994, it could not have been executed by her as she died[11] three years prior to the execution of the said affidavit of loss.

Ang further alleged that on September 22, 1995, respondent made himself the attorney-in-fact of William Magpayo, Antonio Diamante, Patricia Diamante, Lolita Canque, Gregorio Diamante, Jr. and Fe D. Montero, and pursuant to the Special Power of Attorney in his favor, executed a Deed of Sale[12] selling Lot No. 2066-B-2-B-4 to Lim Kim So Mercantile Co. on October 10, 1995. Ang complained that the sale was made even though a civil case involving the said parcel of land was pending before the RTC of Mandaue City, Cebu.[13]

In his Comment,[14] respondent denied any wrongdoing and argued that Ang is merely using the present administrative complaint as a tool to force the defendants in a pending civil case and their counsel, herein respondent, to accede to his wishes. Respondent averred that Ang had filed Civil Case No. Man-2202 before Branch 55 of the Mandaue City RTC. He anchored his claim on the Extra-judicial Declaration of Heirs and Partition and sought to annul the deed of sale and prayed for reconveyance of the subject parcel of land. During the pre-trial conference in Civil Case No. Man-2202, Ang admitted that he is not an heir of the late Candelaria Magpayo but insisted on his claim for a share of the lot because he is allegedly the son of the late Isaias Ang, the common-law husband of Candelaria Magpayo. Because of his admission, the notice of *lis pendens* annotated in the four certificates of title of the land in question were ordered cancelled and the land effectively became available for disposition. Ang sought reconsideration of the order, but

[10] *Id.* at 25.

[11] *Id.* at 26.

[12] *Id.* at 33-34.

[13] *Id.* at 466.

[14] *Id.* at 54-58.

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a compromise was reached that only one TCT (TCT No. 34266) will be annotated with a notice of *lis pendens*. Respondent surmised that these developments in Civil Case No. Man-2202 meant that Ang would lose his case so Ang resorted to the filing of the present administrative complaint. Thus, respondent prayed for the dismissal of the case for being devoid of any factual or legal basis, or in the alternative, holding resolution of the instant case in abeyance pending resolution of Civil Case No. Man-2202 allegedly because the issues in the present administrative case are similar to the issues or subject matters involved in said civil case.

Investigating Commissioner Lydia A. Navarro of the IBP Commission on Bar Discipline, to whom the case was referred for investigation, report and recommendation, submitted her Report and Recommendation[15] finding respondent administratively liable. She recommended that respondent be suspended from the practice of law for three months. She held that respondent committed an unethical act when he allowed himself to be an instrument in the disposal of the subject property through a deed of sale executed between him as attorney-in-fact of his client and Lim Kim So Mercantile Co. despite his knowledge that said property is the subject of a pending litigation before the RTC of Mandaue City, Cebu. The Investigating Commissioner additionally found that respondent "delegated the notarial functions to the clerical staff of their office before being brought to him for his signature." This, according to the commissioner, "must have been the reason for the forged signatures of the parties in the questioned document…as well as the erroneous entry in his notarial register…."[16] Nonetheless, the Investigating Commissioner merely reminded respondent to be more cautious in the performance of his duties as regards his infraction of his notarial duties. She held,

> Respondent should have been more cautious in his duty as notary public which requires that the party subscribing to the authenticity of the document should personally appear and sign the same before

[15] *Id.* at 463-471.

[16] *Id.* at 470.

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respondent's actual presence. As such notary public respondent should not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in accordance with Rule 9.01[17] of the Code of Professional Responsibility.[18]

On November 12, 2005, the Board of Governors of the IBP issued Resolution No. XVII-2005-141,[19] adopting the findings of the Investigating Commissioner but modifying the recommended penalty. Instead of suspension for three months, the Board recommended the penalty of suspension from the practice of law for one year and revocation of respondent's notarial commission and disqualification from reappointment as notary public for two years.

Respondent filed a motion for reconsideration,[20] arguing that it was neither illegal nor unethical for a lawyer to accept appointment as attorney-in-fact of a client to sell a property involved in a pending litigation and to act as such. He further contended that granting that his act was unethical, the modified penalty was evidently too harsh and extremely excessive considering that the act complained of was not unlawful and done without malice.

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[17] Rule 9.01. – A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

[18] *Rollo*, Vol. 1, p. 470.

[19] *Id.* at 462. The Resolution reads,

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's allowed himself [sic] to be an instrument as attorney-in-fact of his client, Atty. James Joseph Gupana is hereby SUSPENDED from the practice of law for one (1) year and Respondent's notarial commission is Revoked and Disqualified [sic] from reappointment as Notary Public for two (2) years.

[20] *Id.* at 476-480.

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On December 11, 2008, the IBP Board of Governors adopted Resolution No. XVIII-2008-698[21] denying respondent's motion for reconsideration and affirming Resolution No. XVII-2005-141. Hence, this petition for review.

Respondent reiterates that being commissioned by his own clients to sell a portion of a parcel of land, part of which is involved in litigation, is not *per se* illegal or unethical. According to him, his clients got his help to sell part of the land and because they were residing in different provinces, they executed a Special Power of Attorney in his favor.[22]

We affirm the resolution of the IBP Board of Governors finding respondent administratively liable.

After reviewing the records of the case, the Court finds that respondent did not act unethically when he sold the property in dispute as the sellers' attorney-in-fact because there was no more notice of *lis pendens* annotated on the particular lot sold. Likewise, the Court finds no sufficient evidence to show that the Deed of Absolute Sale executed by Candelaria Magpayo on April 17, 1989 was antedated.

However, the Court finds respondent administratively liable for violation of his notarial duties when he failed to require the personal presence of Candelaria Magpayo when he notarized the Affidavit of Loss which Candelaria allegedly executed on April 29, 1994. Section 1 of Public Act No. 2103, otherwise known as the Notarial Law, explicitly provides:

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[21] *Rollo*, Vol. III, p. 67. The Resolution reads,

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Recommendation of the Board of Governors First Division of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the Motion for Reconsideration is hereby DENIED and Resolution No. XVII-2005-141 of the Board of Governors dated 12 November 2005 Suspending Atty. James Joseph Gupana from the practice of law for one (1) year and Disqualification from reappointment as Notary Public for two (2) years is AFFIRMED.

[22] *Rollo*, Vol. II, pp. 21-22.

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> Sec. 1. x x x
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> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment 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 certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

From the foregoing, it is clear that the party acknowledging must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.[23] In the case at bar, the jurat of the Affidavit of Loss stated that Candelaria subscribed to the affidavit before respondent on April 29, 1994, at Mandaue City. Candelaria, however, was already dead since March 26, 1991. Hence, it is clear that the jurat was made in violation of the notarial law. Indeed, respondent averred in his position paper before the IBP that he did not in fact know Candelaria personally before, during and after the notarization[24] thus admitting that Candelaria was not present when he notarized the documents.

Time and again, we have held that notarization of a document is not an empty act or routine.[25] Thus, in *Bernardo v. Atty. Ramos*,[26] the Court emphasized the significance of the act of notarization, to wit:

> The importance attached to the act of notarization cannot be overemphasized. Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.

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[23] *Coronado v. Atty. Felongco*, 398 Phil. 496, 502 (2000).

[24] *Rollo*, Vol. I, p. 384.

[25] *Gerona v. Atty. Datingaling*, 446 Phil. 203, 216 (2003); *Coronado v. Atty. Felongco*, *supra* note 23.

[26] 433 Phil. 8, 15-16 (2002).

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Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.

For this reason notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

A notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity.[27] It devolves upon respondent to act with due care and diligence in stamping fiat on the questioned documents. Respondent's failure to perform his duty as a notary public resulted in undermining the integrity of a notary public and in degrading the function of notarization. Hence, he should be liable for his infraction, not only as a notary public but also as a lawyer.

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 respondent and failing therein, he must now accept the commensurate consequences of his professional indiscretion.[28] As the Court has held in *Flores v. Chua*,[29]

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[27] *Follosco v. Atty. Mateo*, 466 Phil. 305, 312 (2004).

[28] *Villarin v. Atty. Sabate, Jr.*, 382 Phil. 1, 6-7 (2000).

[29] 366 Phil. 132, 153 (1999).

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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…. (Emphasis supplied.)

Respondent likewise violated Rule 9.01, Canon 9, of the Code of Professional Responsibility which provides that "*[a] lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing*." Respondent averred in his position paper that it had been his consistent practice to course through clerical staff documents to be notarized. Upon referral, said clerical staff investigates whether the documents are complete as to the fundamental requirements and inquires as to the identity of the individual signatories thereto. If everything is in order, they ask the parties to sign the documents and forward them to him and he again inquires about the identities of the parties before affixing his notarial signature.[30] It is also his clerical staff who records entries in his notarial report. As aforesaid, respondent is mandated to observe with utmost care the basic requirements in the performance of his duties as a notary and to ascertain that the persons who signed the documents are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. In merely relying on his clerical staff to determine the completeness of documents brought to him for notarization, limiting his participation in the notarization process to simply inquiring about the identities of the persons appearing before him, and in notarizing an affidavit executed by a dead person, respondent is liable for misconduct. Under the facts and circumstances of the case, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year are in order.[31]

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[30] *Rollo*, Vol. I, pp. 383-384.

[31] See *Lanuzo v. Atty. Bongon*, 587 Phil. 658, 662 (2008).

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WHEREFORE, respondent Atty. James Joseph Gupana is found administratively liable for misconduct and is **SUSPENDED** from the practice of law for one year. Further, his notarial commission, if any, is **REVOKED** and he is disqualified from reappointment as Notary Public for a period of two years, with a stern warning that repetition of the same or similar conduct in the future will be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Decision likewise be attached to the personal records of respondent.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-11-2903. February 5, 2014]
(Formerly A.M. OCA IPI No. 09-2181-MTJ)

ANGELITO R. MARQUEZ, EDUARDO R. MARQUEZ, CRISTINA M. OCAMPO, CARMEN MARQUEZ-ROSAS, HEIRS OF ERNESTO MARQUEZ, RENATO R. MARQUEZ, ALFREDO R. MARQUEZ, FRED EVANGELISTA, JOSE MACALINO, SANTIAGO MARQUEZ, SPOUSES FREDDIE and JOCELYN FACUNLA, SPOUSES RODRIGO and VIRGINIA MAZON, SPOUSES ALFONSO and LEONILA CASCO, SPOUSES BENJAMIN and PRISCILLA BUENAVIDES, EDUARDO FACUNLA, and ALICIA A. VILLANUEVA, *complainants, vs.* **JUDGE VENANCIO M. OVEJERA in his capacity**