Supreme Court E-Library

In this relation, the distinctions between suits for trademark infringement and unfair competition prove useful: (*a*) the former is the unauthorized use of a trademark, whereas the latter is the passing off of one's goods as those of another; (*b*) fraudulent intent is unnecessary in the former, while it is essential in the latter; and (*c*) in the former, prior registration of the trademark is a pre-requisite to the action, while it is not necessary in the latter.[21]

WHEREFORE, the petition is **DENIED.** The Decision dated September 16, 2013 and the Resolution dated May 29, 2014 of the Court of Appeals in CA-G.R. CV No. 93679 are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr.,[*] *Leonardo-de Castro*[**] *(Acting Chairperson), Bersamin,* and *Perez, JJ.,* concur.

SECOND DIVISION

[A.C. No. 8637. September 15, 2014]

IMELDA CATO GADDI, *complainant, vs.* **ATTY. LOPE M. VELASCO,** *respondent.*

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[21] *Del Monte Corporation v. Court of Appeals*, 260 Phil. 435, 439-440 (1990).

[*] Designated Acting Member per Special Order No. 1772 dated August 28, 2014.

[**] Per Special Order No. 1771 dated August 28, 2014.

Supreme Court E-Library

SYLLABUS

1. **LEGAL ETHICS; NOTARIES PUBLIC; NOTARIZATION; NOTARIZATION CONVERTS A PRIVATE DOCUMENT TO A PUBLIC DOCUMENT, MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.—** Time and again, we have reminded lawyers commissioned as notaries public that notarization is not an empty, meaningless, and routinary act. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face; for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

2. **ID.; ID.; ID.; NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE SIGNATORY TO THE DOCUMENT IS IN THE NOTARY'S PRESENCE PERSONALLY AT THE TIME OF NOTARIZATION, AND PERSONALLY KNOWN TO THE NOTARY PUBLIC OR OTHERWISE IDENTIFIED THROUGH COMPETENT EVIDENCE OF IDENTITY.—** The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or other mark the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act. A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.

3. **ID.; ID.; ID.; FAILURE TO DISCHARGE DUTIES AS NOTARY PUBLIC.—** In *Isenhardt v. Real,* a notary public who failed to discharge his duties was meted out the penalty of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two

Supreme Court E-Library

years, and suspension from the practice of law for one year. For notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, Velasco failed to discharge his duties as notary public and breached Canon 1 and Rule 1.01 of the Code of Professional Responsibility. Considering these findings and our previous rulings, Velasco should not only be disqualified for two years as a notary public, he must also be suspended from the practice of law for one year.

APPEARANCES OF COUNSEL

Pedro Lazo for complainant.

R E S O L U T I O N

CARPIO, *Acting C.J.*:

The Case

Before us is an administrative complaint filed by Imelda Cato Gaddi (Gaddi) against Atty. Lope M. Velasco (Velasco) for violation of the 2004 Rules on Notarial Practice.

The Facts

According to Gaddi, she was the Operations and Accounting Manager of the Bert Lozada Swimming School (BLSS) when she broached the idea of opening a branch of BLSS in Solano, Nueva Vizcaya (BLSS in Solano) to Angelo Lozada (Angelo), the Chief Operations Officer of BLSS. Believing that Angelo agreed, Gaddi opened a BLSS in Solano. However, in April 2010, Angelo informed the management that he did not authorize a BLSS in Solano. Upon Angelo's complaint, the police officers apprehended the swimming instructors of BLSS in Solano, namely: Jonathan Lagamzon Lozare, Katherine Agatha Gaddi Ancheta, who is Gaddi's niece, and Lorenz Ocampo Gaddi, who is Gaddi's grandson.

At past 10:00 a.m. of 22 April 2010, while inside the BLSS main office in Sta. Ana, Manila, Gaddi was informed of the

Supreme Court E-Library

apprehension of the swimming instructors. Worried, Gaddi pleaded with Angelo's wife, Kristina Marie, and the BLSS Programs Manager Aleza Garcia for permission to leave the office and proceed to Nueva Vizcaya. Instead of acceding to her plea, they commanded Gaddi to make a handwritten admission[1] that the BLSS in Solano was unauthorized. They warned Gaddi that she cannot leave the office without the handwritten admission. Thus, Gaddi conceded in doing the handwritten admission and left the office before 1:00 p.m. of the same day. Subsequently, Gaddi found out that Angelo filed a complaint against her regarding the BLSS in Solano using her handwritten admission, which was already notarized by Velasco.

Thus, Gaddi filed the present complaint against Velasco for violation of the 2004 Rules on Notarial Practice, specifically Rule IV, Section 2 (b) and Rule VI, Section 3. Gaddi denied that she personally appeared before Velasco to have her handwritten admission notarized. She alleged that she did not consent to its notarization nor did she personally know him, give any competent evidence of identity or sign the notarial register.

In his comment dated 17 September 2010,[2] Velasco alleged that he was commissioned notary public for Makati City from 4 January 2010 to 31 December 2011. He alleged that Gaddi appeared before him in his notarial office in Makati City on 22 April 2010 and requested for the notarization of a four-page handwritten document. He ascertained Gaddi's identity, through two identification cards – her BLSS ID and Tax Identification Number (TIN) ID, and that the document was her own. Thereafter, he notarized the document and recorded it in his notarial register as Doc. No. 130, Page No. 27, Book No. 192, Series of 2010. Velasco insisted that he duly complied with the 2004 Rules on Notarial Practice and it was Gaddi's complaint, which was notarized by a fake notary public. Velasco claimed that Gaddi only denied having the document notarized when she found out that Angelo used the document against her.

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[1] *Rollo*, pp. 6-9.

[2] *Id*. at 13-20.

Supreme Court E-Library

In a Resolution dated 18 October 2010,[3] the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP's Report and Recommendation

In a Report and Recommendation dated 23 June 2011,[4] Investigating Commissioner Pablo S. Castillo (Investigating Commissioner) found the complaint impressed with merit, and recommended a penalty of fine of ₱5,000.00 on Velasco for violation of Rule IV, Section 2(b) and Rule VI, Section 3 of the 2004 Rules on Notarial Practice.

The Investigating Commissioner gave more credence to Gaddi's statement that she did not personally appear before Velasco to have her handwritten admission notarized. The Investigating Commissioner found it contradictory to logic and human experience that Gaddi went first to Makati City to have her self-incriminating handwritten admission notarized before proceeding to Nueva Vizcaya. The Investigating Commissioner also believed Gaddi's statement that the identification cards presented by Velasco were computer-generated from the BLSS office, since the portion of the notarial certificate listing the evidence of identity was left blank. As to Velasco's claim that Gaddi's complaint had a fake notary public, the Investigating Commissioner found it unsubstantiated.

In Resolution No. XX-2013-127[5] passed on 13 February 2013, the IBP Board of Governors adopted and approved the Investigating Commissioner's report and recommendation, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as

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[3] *Id*. at 23.

[4] *Id*. at 55-59.

[5] *Id*. at 54.

Supreme Court E-Library

Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for violation of Rule IV, Sec. [2(b) and Rule VI, Sec.] 3 of the 2004 Rules on Notarial Practice, Atty. Lope M. Velasco's Notarial Commission is hereby REVOKED and DISQUALIFIED for being Commissioned as Notary Public for two (2) years with stern [w]arning to be more circumspect in his dealing and that repetition of the same act shall be dealt with more severely.

There was no motion for reconsideration filed.

The Ruling of the Court

We sustain the findings of the IBP and adopt its recommendations with modification.

Time and again, we have reminded lawyers commissioned as notaries public that notarization is not an empty, meaningless, and routinary act.[6] Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity.[7] A notarial document is, by law, entitled to full faith and credit upon its face; for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[8]

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity.[9] At the time of notarization, the signatory shall sign or affix

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[6] *Angeles v. Ibañez,* 596 Phil. 99 (2009); *Dela Cruz-Sillano v. Pangan,* 592 Phil. 219 (2008); *Legaspi v. Landrito,* 590 Phil. 1 (2008); *Pantoja-Mumar v. Flores*, 549 Phil. 261 (2007); *Gonzales v. Ramos*, 499 Phil. 345 *(2005); Dela Cruz v. Zabala,* 485 Phil. 83 (2004); *Follosco v. Mateo,* 466 Phil. 305 (2004); *Aquino v. Manese,* 448 Phil. 555 (2003).

[7] *Id*.

[8] *Id*.

[9] Rule IV, Section 2(b).

Supreme Court E-Library

with a thumb or other mark the notary public's notarial register.[10] The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed.[11] If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act.[12] A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.[13]

In the present case, contrary to Velasco's claim that Gaddi appeared before him and presented two identification cards as proof of her identity, the notarial certificate, in rubber stamp, itself indicates: "SUBSCRIBE AND SWORN TO BEFORE ME THIS APR 22, 2010 x x x AT MAKATI CITY. AFFIANT EXHIBITING TO ME HIS/HER C.T.C. NO._____ISSUED AT/ON_____."[14] The unfilled spaces clearly establish that Velasco had been remiss in his duty of ascertaining the identity of the signatory to the document. Velasco did not comply with the most basic function that a notary public must do, that is, to require the presence of Gaddi; otherwise, he could have ascertained that the handwritten admission was executed involuntarily and refused to notarize the document. Furthermore, Velasco affixed his signature in an incomplete notarial certificate. Velasco did not even present his notarial register to rebut Gaddi's allegations. It is presumed that evidence willfully suppressed would be adverse if produced.[15]

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[10] Rule VI, Section 3(a).

[11] *Dela Cruz-Sillano v. Pangan, supra* note 6.

[12] Rule IV, Section 4(c).

[13] Rule IV, Section 5(b).

[14] *Rollo,* p. 9.

[15] Rules of Court, Rule 131, Section 3(e).

Supreme Court E-Library

In *Isenhardt v. Real,*[16] a notary public who failed to discharge his duties was meted out the penalty of 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. For notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, Velasco failed to discharge his duties as notary public and breached Canon 1[17] and Rule 1.01[18] of the Code of Professional Responsibility. Considering these findings and our previous rulings,[19] Velasco should not only be disqualified for two years as a notary public, he must also be suspended from the practice of law for one year.

WHEREFORE, the Court finds respondent Atty. Lope M. Velasco **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one year, **REVOKES** his incumbent notarial commission, if any, and **PROHIBITS** him from being commissioned as a notary public for two years, effective immediately, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated

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[16] A.C. No. 8254, 15 February 2012, 666 SCRA 20, citing *Lanuzo v. Bongon,* 587 Phil. 658 (2008); *Bautista v. Bernabe*, 517 Phil. 236 (2006); *Judge Lopena v. Cabatos,* 504 Phil. 1 (2005); *Tabas v. Mangibin*, 466 Phil. 296 (2004).

[17] A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

[18] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[19] *Isenhardt v. Real, supra* note 16; *Angeles v. Ibañez, supra* note 6; *Pantoja-Mumar v. Flores, supra* note 6; *Gonzales v. Ramos, supra* note 6.

Supreme Court E-Library

Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Brion, del Castillo, Villarama, Jr.,[*] and *Leonen, JJ.*, concur.

SECOND DIVISION

[G.R. No. 178733. September 15, 2014]

ELISA ANGELES, *petitioner, vs.* **HON. COURT OF APPEALS, Officer-In-Charge MARILOU C. MARTIN, Deputy Sheriff JOSELITO SP ASTORGA, MARCO BOCO, and JOHN DOES, Regional Trial Court of Pasig, Branch 268,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; PROCEEDINGS MAY BE INITIATED *MOTU PROPRIO* BY THE COURT AGAINST WHICH THE CONTEMPT WAS COMMITTED.— [S]peaking of contempt, the appellate court is x x x correct in its position that if respondent public officers should be punished for their perceived defiance or failure to abide by the trial court's directives and processes, then the contempt charge should have been initiated in the court *a quo*, and not in the CA. Sections 4 and 5, Rule 71 of the Rules of Court state, respectively, that "[p]roceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed" and "[w]here the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court."

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[*] Designated Acting Member per Special Order No. 1767 dated 27 August 2014.