



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated March 6, 2023, which reads as follows:

“A.C. No. 13517 (Formerly CBD Case No. 19-6110) (*Annabelle F. Jaberina v. Atty. Joselito Troy G. Suello*). – Before this Court is a Notice of Resolution¹ of the Integrated Bar of the Philippines (IBP)-Board of Governors, along with the concomitant Recommendation and Report² of the IBP-Commission on Bar Discipline (CBD), relative to the IBP’s disciplinary recommendations for the Court’s disposition of CBD Case No. 19-6110.

Factual Antecedents

In her Verified Complaint³ dated May 20, 2019, Annabelle F. Jaberina (complainant) alleges that on October 16, 2010, Atty. Joselito Troy G. Suello (respondent) notarized an instrument entitled “*Waiver of Rights*”⁴ relative to the interest and participation of Rudy Lasco and Florenpinas Lasco in a parcel of land (Lot. No. 4345, covering an area of more or less 1,005 square meters [sq. m.]) located in *Barangay Tajao*, Pinamungajan, Cebu. According to the instrument, the said individuals were co-owners of the lot, and they were waiving their rights to a portion of the same equivalent to 42 sq. m. in favor of a certain Rafael Canumay (Rafael) and a certain Feliza Caneso. Said portion of the lot bordered the property owned by a certain Benito Canumay.⁵

Rafael, however, had died on January 29, 1997, as evidenced by the attached copy of his death certificate.⁶ Complainant further alleges that respondent notarized the subject instrument upon the presentation of the signatories’ Community Tax Certificates (CTCs). Finally, complainant points out that since the subject instrument purported to be some kind of donation, respondent should have first ascertained that one of the beneficiaries, *i.e.*, Rafael, was still alive to accept the same.⁷

¹ Rollo, pp. 42-44.

² Id. at 45-57; penned by Investigating Commissioner Atty. Patrick M. Velez.

³ Id. at 2-4.

⁴ Id. at 5.

⁵ Id. at 2-5.

⁶ Id. at 6.

⁷ Id. at 2-3.

In its Order⁸ dated October 21, 2019, the IBP-CBD directed respondent to submit his Answer to the Verified Complaint. Respondent duly filed his Verified Answer,⁹ which averred the following in his defense:

1. The notarization of the “*Waiver of Rights*,” which indeed happened on October 16, 2010, was perfectly in order;
2. He had no knowledge as to the truth of Rafael’s death, and is thus incompetent to state the veracity of the same;
3. He nevertheless notarized the subject instrument without further proof of the signatories’ identities since he knew them personally as close friends, which he asserts is exception to the 2004 Rules on Notarial Practice¹⁰ so long as the fact of the notary’s personal acquaintance with a signatory is reflected in the *jurat*;¹¹
4. CTCs, though no longer considered as competent evidence of a person’s identity, are still required by some laws to be presented before notaries public; and
5. While the “*Waiver of Rights*” does purport to be some kind of donation, he was not required to ascertain whether or not the intended beneficiary was alive, since the latter’s acceptance did not need to be in the same instrument. The said acceptance could have been performed at a later time and in a separate document, so long as this was to be done during the lifetime of the donor.

In her Reply,¹² complainant asserts that the “*Waiver of Rights*” did not state in any part thereof that the signatories were personally known to respondent. She further states that if respondent and the signatories were indeed personally close, he should have inquired as to whether the intended beneficiary was indeed alive. This should have been more so considering the donative nature of the subject instrument, and respondent, as a lawyer and notary public, should have known better to inquire into the full state of facts relative to what he was notarizing.¹³

Only complainant appeared at the mandatory conference on March 6, 2020, as evidenced by the Minutes of the Hearing.¹⁴ Previously on March 2, 2020, she filed a Stipulation of Facts¹⁵ that: 1) respondent notarized the subject instrument; and 2) when respondent notarized the same, the intended beneficiary of the land subject of the “*Waiver of Rights*” had already passed

⁸ Id. at 10.

⁹ Id. at 14-17.

¹⁰ A.M. NO. 02-08-13-SC; promulgated on July 6, 2004.

¹¹ A.M. NO. 02-08-13-SC, Rule II, Section 6.

¹² *Rollo*, pp. 11-12.

¹³ Id.

¹⁴ Id. at 22.

¹⁵ Id. at 23.

away. Respondent, for his part, instead filed his Mandatory Conference Brief¹⁶ which merely reiterated the arguments in his Verified Answer. He also manifested that he could not attend the mandatory conference due to financial constraints.

In its Order¹⁷ dated March 6, 2020, the IBP-CBD directed the parties to file their respective verified position papers. Respondent's Verified Position Paper¹⁸ merely states that he adopts *in toto* the contents and arguments of his Verified Answer as the contents and arguments of his Verified Position Paper. Complainant's Position Paper,¹⁹ for its part, also merely reiterates the arguments contained in her Verified Complaint and Reply. She, however, changed the date of the subject instrument's notarization to October 16, 2009.

Ruling of the IBP-CBD Investigating Commissioner

On November 16, 2021, the IBP-CBD's Investigating Commissioner Atty. Patrick M. Velez issued his Recommendation and Report relative to the case, with the following dispositive portion:

WHEREFORE, under the attendant circumstances, it is Respectfully **RECOMMENDED** that the Notarial Commission of Respondent Atty. Joselito Troy Suello be **SUSPENDED** for a period of not less than six (6) months. He should also be **REPRIMANDED** and warned to exercise more prudence in the exercise of his functions as a notary public and as a lawyer.

Similarly, Atty. Jose [*sic*] Troy Suello is also reminded that he must be more circumspect in the p[e]rformance of his duties, and that omissions of this kind will be met with more severe sanctions should it happen again.²⁰ (Emphasis in the original)

In fine, the IBP-CBD Investigating Commissioner came to the following findings:

1. Respondent was unable to prove that he personally knew the signatories to the "*Waiver of Rights*." Since this was a fact specifically put in issue by complainant, respondent did not even present affidavits of the signatories to corroborate their supposed close connection, or even pictures of testimonies of other persons with knowledge of the same;
2. Absent the aforementioned proof that respondent personally knew the signatories, the IBP-CBD Investigating Commissioner invoked the disputable presumption under Section 3(e), Rule 131 of the 2019 Revised Rules on Evidence "[t]hat evidence willfully

¹⁶ Id. at 28-30.

¹⁷ Id. at 27.

¹⁸ Id. at 32-33.

¹⁹ Id. at 34-36.

²⁰ Id. at 56-57.

suppressed would be adverse if produced.” Thus, since respondent failed to present evidence of a fact necessary to his defense—and it was within his power to do so, it is presumed that such fact does not exist;

3. Thus, respondent is presumed to have actually needed to verify the signatories’ identities *via* the requirements of the 2004 Rules on Notarial Practice. Section 2(b)(2), Rule IV of the same prohibits the performance of notarial acts if the signatories to an instrument are not personally known to the notary public, or are otherwise not identified by competent evidence of their identities. The IBP-CBD Investigating Commissioner cited the relatively recent case of *Iringan v. Gumangan*²¹ (*Iringan*) as the Court’s reiteration of the said requirement of competent proof of identity if there was no indication or allegation that a notary public personally knew the signatories to a document presented before him for notarization;
4. It was clear that respondent did not know of the death of Rafael, and respondent is correct in pointing out that the intended beneficiary’s acceptance of the purported donation in the “*Waiver of Rights*” could have been done at a later time and in a separate instrument as allowed under Article 749²² of Republic Act No. 386, otherwise known as the Civil Code of the Philippines. But his claims of close personal ties with the signatories to the subject instrument militates against him, since this meant that he should have known more about the status of the persons involved in the purported donation;
5. The IBP-CBD Investigating Commissioner found no evidence that respondent’s departure from the established rules was done with malice, fraud, or premeditated design. Since complainant offered no further proof for evaluation, much less her actual involvement in the execution and implementation of the subject instrument, there was no way to surmise how the said notarization affected her rights. However, citing the case of *De Jesus v. Sanchez-Malit*,²³ respondent had a duty to observe utmost care in making sure that the basic requirements of notarization were fulfilled. Notarization is not an empty or meaningless routine, and when a notary public performs a notarial act on an instrument with knowledge of a false statement or

²¹ 816 Phil. 820 (2017).

²² Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

²³ 738 Phil. 480 (2014).

information contained therein, said notary public must be disciplined accordingly;

6. finally, the IBP-CBD Investigating Commissioner found it sufficient to simply suspend respondent from his notarial practice due to the absence of bad faith on the latter's part, and to be simply reminded of the strict ethics required of the legal profession.

Resolution of the IBP-Board of Governors

On March 17, 2022, as previously stated, the IBP-Board of Governors passed its Resolution relative to the case, which increased the penalty of respondent's suspension from his notarial practice, viz.:

RESOLUTION NO. CBD-XXV-2022-03-13

CBD Case No. 19-6110

Annabelle Fajardo Jaberina vs.

Atty. Joselito Troy G. Suello

*RESOLVED, to APPROVE and ADOPT, as it is hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner to impose upon Respondent Atty. Joselito Troy G. Suello of [sic] the following penalties: i) **REPRIMAND**; ii) **IMMEDIATE REVOCATION of his Notarial Commission, if subsisting**; and iii) **DISQUALIFICATION from being commissioned as a Notary Public for Two (2) Years**; with **WARNING** that a repetition of the same or similar act shall be dealt with more severely.²⁴ (Emphases and italics in the original)*

Issue before the Court

For the Court's consideration is the approval or modification of the Resolution of the IBP-Board of Governors, which increased the penalty of respondent's suspension from his notarial practice from six (6) months (as initially recommended by the IBP-CBD Investigating Commissioner) to two (2) years.

Ruling of the Court

The Court hereby adopts the aforementioned Resolution of the IBP-Board of Governors *in toto*.

The findings of the IBP-CBD Investigating Commissioner relative to the professional liability of respondent as a notarial practitioner are correct. The latter was indeed remiss in his obligations and duties as a notary public to see to the formal requirements of the subject instrument's notarization.

The notarial acknowledgement at the bottom of the "*Waiver of Rights*" states the following language:

²⁴ Rollo, p. 42.

BEFORE ME, a notary public in the City of Cebu City, this ____ [sic] day [of] _____ 2009, personally appeared, Rudy Lasco & Florenpinas Lasco, with her [sic] Res. Cert. Nos. 18441903 & 13461757, issued on 10/19/09 at Pinamungajan, Cebu, known to me to be the same person who executed the foregoing instrument an [sic] they acknowledge to me that the same are their free act and deed. Parties are all Filipino citizens.

WITNESS MY HAND AND SEAL ON THE DATE AND PLACE FIRST ABOVE-WRITTEN.²⁵ (Emphasis, italics, and underscoring supplied)

A perusal of the aforementioned acknowledgement reveals that respondent did not even write, type, or stamp the date of his notarial act. This more or less explains the initial confusion as to the true date of the subject instrument's execution and notarization: October 16, 2010, as stated in the Verified Complaint and admitted in respondent's Verified Answer, or October 16, 2009, as stated in Complainant's Position Paper. However, the date does not actually matter for present purposes, since it is clear that respondent's notarial information and signature are indisputably on the subject instrument. The entry in respondent's notarial book, *i.e.*, "Doc. No. 50, Book No. 10, Page No. 89, Series of 2009," is also clear and undisputed. The fact of respondent's notarization of the "*Waiver of Rights*" having been duly proven and undisputed, the Court now considers the extent of his professional liability as a notary public.

As correctly invoked by the IBP-CBD Investigating Commissioner, the case of *Iringan*²⁶ is clearly applicable to the present proceedings. The relevant portions of the case's discussion are instructive, *viz.*:

Atty. Gumangan herein violated the 2004 Rules on Notarial Practice by notarizing the Contract of Lease on December 30, 2005 without competent evidence of identity of Renato and Carmelo and, thus, committing an expressly prohibited act under the Rules.

Atty. Gumangan did not allege that he personally knew Renato and Carmelo when they appeared before him on December 30, 2005 for the notarization of the Contract of Lease. There was no showing that Renato and Carmelo presented current identification documents issued by an official agency bearing their photographs and signatures before Atty. Gumangan notarized their Contract of Lease. Langgaman and Padua witnessed Renato and Carmelo signing the Contract of Lease in person at Atty. Gumangan's office, but they did not attest under oath or affirmation that they personally knew Renato and Carmelo, and neither did they present their own documentary identification.

According to Renato, Atty. Gumangan asked them to present their CTCs, but neither Renato nor Carmelo had CTCs at that moment. Renato only secured a CTC on January 17, 2006, which he belatedly presented to Atty. Gumangan for recording.

²⁵ Id. at 5.

²⁶ Supra note 21.

CTCs no longer qualifies [*sic*] as competent evidence of the parties' identity [*sic*] as defined under Rule II, Section 12 of 2004 Rules on Notarial Practice. In *Baylon v. Almo*, considering the ease with which a CTC could be obtained these days and recognizing the established unreliability of a CTC in proving the identity of a person who wishes to have his document notarized, the Court did not include the CTC in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized. Worse, neither Renato nor Carmelo had CTCs with them on December 30, 2005, yet, Atty. Gumangan still proceeded with notarizing the contract of lease, allowing Renato to belatedly present his CTC weeks later, while Carmelo did not present any CTC at all.²⁷ (Citations omitted)

The Court also notes the more recent case of *Spouses Aldea v. Bagay*²⁸ (*Spouses Aldea*) as a more apt guide for present purposes:

If the person appearing before the notary public is not personally known to the latter, Section 2 (b), Rule IV of the 2004 Rules on Notarial [Practice] require the presentation of a competent evidence of identity. Section 12, Rule II of the same Rules defines competent evidence of identity as: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction, who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public a documentary identification. **The purpose of these rules is for the notary to verify the genuineness of the signature of the affiant and to determine that the document is the signatory's free act and deed.**

In this case, Atty. Bagay admits notarizing the Extra-Judicial Settlement of Estate with Sale on 28 May 2010. By affixing his signature and notarial seal on the document, he attested that Virginia and Leonida personally appeared before him on the day it was notarized and verified the contents thereof. He, however, failed to refute the fact that Virginia and Leonida were not present on the day of notarization. Such negligent act is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents.

Furthermore, Atty. Bagay did not personally know the persons who executed the subject document. He merely relied on the community tax certificates of the people who appeared before him, which, however, are not competent evidence of identity under Section 12, Rule II of the 2004 Notarial [Practice]. As the Court held in the past, reliance on the community tax certificates alone is a punishable indiscretion by the notary public.

Based on the established facts, Atty. Bagay was clearly negligent in the discharge of his duties and functions, not only as a notary public, but also as a lawyer. His acts and omissions resulted not only in the damage to those directly affected by the notarized document, but also in undermining

²⁷ Id. at 833-835.

²⁸ A.C. No. 12733, October 14, 2020.

the integrity of a notary public and in degrading the function of notarization. He should thus, be held liable for such negligence not only as a notary public but also as a lawyer. The fact that Atty. Bagay was absolved in the criminal case filed by Virginia is of no moment; it does not exculpate him from the present administrative charge because what is at issue here is his act of notarizing a document, without complying with the 2004 Notarial [Practice].²⁹ (Emphasis in the original; citations omitted)

From the facts, and including his failure to affix the date of his notarial act upon the “*Waiver of Rights*,” respondent’s negligence is clear. Since he could not prove his close relationship with the signatories, he was thus actually required to compel said signatories to produce competent evidence of their identities. Even if he is correct in his supposition regarding the legal effects (or lack thereof) of the subject instrument without the intended beneficiary’s acceptance in the same, and despite his purported lack of knowledge *vis-à-vis* the death of the said intended beneficiary, respondent should have covered all bases by just simply following the formal requirements of the 2004 Rules on Notarial Practice. His bare assertion that CTCs are still valid for other purposes does not rest well with the Court, since the Verified Complaint against him is precisely for his failing to follow the notarial rules relative to the subject instrument.

Moreover, had he truly known the signatories deeply and personally, he should have indicated so in his notarial acknowledgement and should have been ready to prove the same before the present proceedings. Instead, however, his notarial acknowledgement simply states that the signatories were known to him to be the same persons executing the “*Waiver of Rights*,” which the Court notes as insufficient language for the purpose. Moreover, respondent had every opportunity to prove said close relationship before the IBP-CBD Investigating Commissioner, but he did not. Accordingly, the IBP-CBD Investigating Commissioner and the IBP-Board of Governors showed no error in their recommendations relative to the case.

As for respondent’s penalties, the Court notes that the IBP-Board of Governors modified the same to reflect the penalties imposed by the Court in *Iringan*³⁰ case. The Court, however, notes that respondent was already disciplined before in *Pitogo v. Suello*,³¹ viz.:

WHEREFORE, we find respondent Atty. Joselito Troy Suello **GUILTY** of violating Canon 1 and Rule 1.01 of the Code of Professional Responsibility and the 2004 Rules on Notarial Practice. Accordingly, he is **SUSPENDED** from the practice of law for three (3) months and is **STERNLY WARNED** that any similar violation will be dealt with more severely. His notarial commission is immediately revoked if presently commissioned. He is **DISQUALIFIED** from being commissioned as notary public for one (1) year.

²⁹ Id.

³⁰ Supra note 21.

³¹ 756 Phil. 124 (2015).

SO ORDERED.³² (Emphases in the original)

Given the foregoing, respondent now merits another suspension from the practice of law for three (3) months along with another revocation of his notarial commission and a new period of disqualification from being commissioned as a notary public for two (2) years.

WHEREFORE, in view of the foregoing, respondent Atty. Joselito Troy G. Suello is hereby found **GUILTY** of violating the 2004 Rules on Notarial Practice. Accordingly, his notarial commission, if still extant, is hereby **IMMEDIATELY REVOKED**, and he is also **DISQUALIFIED** from being commissioned as a notary public for a period of two (2) years, effective immediately. Respondent Atty. Joselito Troy G. Suello is also hereby **SUSPENDED** from the practice of law for a period of **THREE (3) MONTHS**.

Respondent Atty. Joselito Troy G. Suello's suspension from the practice of law shall take effect immediately upon his receipt of this Resolution. He is hereby **DIRECTED** to immediately file his manifestation to the Court that his suspension has started, with copies furnished to all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be entered into the records of respondent Atty. Joselito Troy G. Suello. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the Philippines for their information and guidance.

SO ORDERED."

By authority of the Court:

Misael Dom
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
shj/3

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³² Id. at 134.

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