



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated August 17, 2022, which reads as follows:

“A.C. No. 13374 – DOROTEA ESPIRITU-INTIA, ET AL., complainants, v. ATTY. HERMINO UBANA, SR., respondent.

The Court **NOTES** the Letter dated 01 March 2022 of the Integrated Bar of the Philippines (IBP) transmitting the documents pertaining to this case.

Before the Court is a Verified Complaint,¹ dated 20 July 2019, filed before the Integrated Bar of the Philippines-Commission on Bar Discipline against Atty. Hermino Ubana, Sr. (**Respondent**) for alleged violation of Section 2, paragraph (b) of the 2004 Rules on Notarial Practice and Canon 1, 1.01 of the Code of Professional Responsibility.

The Facts

Dorotea Espiritu-Intia (**Complainant Dorotea**), acting on her behalf and representing her children as attorney-in-fact, Jan Michael E. Intia, Dan Christian E. Intia, John Bryan E. Intia, Angelica Mae E. Intia, and Alyssa Marie Nicole E. Intia (collectively, **Complainants**) accused the Respondent of violating Section 2, paragraph (b) of the 2004 Rules on Notarial Practice and Canon 1, 1.01 of the Code of Professional Responsibility in connection with the notarization of a Deed of Real Estate Mortgage dated 08 October 2018.²

Complainants are heirs of a commercial lot located at Barrio Calaanan, Caloocan City covered by Transfer Certificate of Title (TCT) No. 38213. Said property was registered in the names of the late Spouses Paciano Intia and

¹ *Rollo*, pp.1-17.

² *Id.* at 1.

Nieves Intia whose sole heir, Licerio A. Intia, died on 16 June 2014. He is survived by his wife Dorotea and his children, herein Complainants.³

The Complainants negotiated with a certain Orison Welles Nino (**Nino**), who offered to purchase the property for ₱18,000,000.00 and executed a Contract to Sell dated 01 May 2018. Nino paid a down payment of ₱3,000,000.00 and issued three postdated checks in favor of Complainant Dorotea. Accordingly, the Complainants handed Nino the Owner's Duplicate of TCT No. 38213. They prepared the necessary documents for the extrajudicial settlement of the estate and transfer of the registration under their names.⁴

Further, Nino required Complainant Dorotea to issue post-dated checks in favor of his financier as security, considering that the subject property will inevitably be registered in their names. Nino promised to immediately return the postdated checks once East West Bank approves his loan of ₱28,000,000.00. Relying on his representation and assurance, Complainant Dorotea issued the requested checks amounting to ₱12,000,000.00.⁵

However, Nino's financier deposited the postdated checks, which were expectedly dishonored. Complainant Dorotea then deposited the three postdated checks issued by Nino as installment payments, but these were likewise dishonored by the drawee bank, the first two for being stale, while the last check was drawn against a closed account. As such, the Complainants forfeited the payments and demanded the return of the Owner's Duplicate of the TCT to the subject property.⁶

Upon verification with the Registry of Deeds for Caloocan City, the Complainants learned that TCT No. 38213 had been cancelled and TCT No. 001-2018003709 had been issued in the names of the Intia children. Complainants were surprised to discover in the Memorandum of Encumbrances in the said TCT that their property was the subject of a Deed of Real Estate Mortgage (**Deed**) dated 08 October 2018 and notarized by Respondent in Las Piñas City.⁷

In the notarized Deed, Complainants allege that the Respondent falsely stated that: (1) the Intia children authorized their mother to sell and mortgage the subject property through a Special Power of Attorney allegedly notarized in Marilao, Bulacan⁸, and (2) they personally appeared before him and acknowledged the said Deed on 08 October 2018 at Las Piñas City⁹. The

³ Id. at 272.

⁴ Id. at 273.

⁵ Id.

⁶ Id.

⁷ Id. at 274.

⁸ Id.

⁹ Id. at 1.

subject Deed was registered in the Respondent's Notarial Register as Doc. No. 268; Page No. 55; Book No. II Series of 2018.¹⁰

Complainant Dorotea asserts that it was physically improbable for her to personally appear before the Respondent¹¹ as she was in Australia on 01 August 2018 and only returned to the Philippines on 30 October 2018, as shown by a Certification from the Bureau of Immigration dated 21 May 2019.¹²

Complainants claim that Respondent's notarial act violated Section 2, paragraph (b) of the 2004 Rules on Notarial Practice A.M. No. 02-8-13-SC that provides: "(b) person shall not perform a notarial act if the person involved as signatory to the instrument or document x x x is **not in the notary's presence personally at the time of the notarization**" (emphasis supplied).

To bolster their claim, the Complainants also secured a certified true copy of page 55, Book II of Respondent's Notarial Book to show that they never affixed their signatures therein. This, Complainants allege, is a clear violation of Section 3 of the Notarial Law¹³ that provides: "At the time of notarization, the notary's notarial register shall be signed or a thumb or other mark affixed by each: (a) principal; xxx."¹⁴

Complainants further allege that the Deed is a "mere simulated contract with an illicit interest of three (3%) percent per month which is clearly intended to defraud" them of their property.¹⁵ The Deed states that the term of the mortgage shall be for a period of three months from 24 April 2018 to 23 July 2018 with an interest of 3% a month. However, the Deed itself was only executed and notarized on 08 October 2018, well after the expiration of the period within which to pay the mortgage.¹⁶

The Respondent, in notarizing the subject Deed, failed to perform his functions as a notary public to "guard against any illegal or immoral arrangements"¹⁷ as the document is clearly prejudicial to the interest of the mortgagor. The interest is clearly excessive, iniquitous, unconscionable, and exorbitant. Said property was also reflected to be free from all liens and encumbrances of any kind when, in truth, it is still subject to the legal

¹⁰ Id. at 7-10.

¹¹ Id. at 2.

¹² Id.

¹³ Acknowledgment and Authentication of Instruments and Documents Without the Philippine Islands, Act No. 2103, 26 January 1912.

¹⁴ *Rollo*, p. 3.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 3; *Salita v. Salve*, 753 Phil. 1-11 (2015).

encumbrance under Section 4, Rule 74, which is clearly annotated on the Memorandum of Encumbrances of said title.

The Complainants further argue that, despite the Respondent's knowledge that they never appeared before him, he acted as the lawyer of the mortgagee in the filing of a Petition for the Extrajudicial Foreclosure of the mortgaged property before the Office of the *Ex-Officio* Sheriff of Caloocan City, and also acted as counsel of the mortgagee in connection with a complaint for falsification of public document they instituted before the Office of the City Prosecutor of Las Piñas City and the Provincial Prosecutor of Bulacan.¹⁸

Lastly, the Complainants underscore the Respondent's own admission in his counter-affidavit submitted before the Office of the Prosecutor that they never appeared personally before him at Las Piñas City. He admitted that the Deed was signed and executed at the house of the mortgagee, Lita Bato, in AyalaAlabang Village, Alabang, Muntinlupa City, on 24 April 2018.¹⁹

In his defense, Respondent denies the allegation of forgery. He claims that he is the family lawyer of Lita Bato and her son Eduardo Bato (collectively, the **Batos**) with whom the Complainants transacted.²⁰ He avers that the Complainants sought the Batos for a loan to cover the estate taxes and registration of the subject property under their names. He further states that Nino was also having problems with the bank that was supposed to grant him a loan for the property acquisition, prompting them to look for a financier.²¹

The Batos, through their staff Catherine Manalaysay, conducted due diligence and verification with the Registry of Deeds and other concerned government agencies, and made records of their submitted documents and meetings through pictures.²²

He claimed that upon the advice of the Batos, Complainant Dorotea submitted a Special Power of Attorney dated 15 March 2018 from her children that authorized her to mortgage the subject property.²³

On 24 April 2018, the Batos approved the loan of ₱12,500,000 and executed a Promissory Note (PN) and the subject Deed, and thereafter issued checks in favor of Nino and Complainant Dorotea. Respondent asseverates that on the same occasion, he impressed upon Complainant Dorotea that the dating and notarization of the Deed cannot be done on that date in his Las

¹⁸ Id.

¹⁹ Id. at 3-4.

²⁰ Id. at 277.

²¹ Id.

²² Id.

²³ Id.

Piñas office pending the settlement of their estate. He explained that the notarization would be done at a later date as they still must wait for the issuance of the new title in their names, to which, he alleged, Complainant Dorotea expressly agreed.

Respondent presented documentary evidence²⁴ of Complainant Dorotea during the signing and thumbmarking of the aforementioned documents, and Nino in the act of signing and receiving the checks. To bolster his defense, he submitted the Joint Counter-Affidavits of the Batos, Catherine Ann B. Manalaysay, and Lorena V. Caballero.

Respondent argues that Complainants are merely nitpicking and are trying to avoid liability under the PN and Deed for fear of losing their property. Respondent contends that:

1. The personal presence of a party to a document before a Notary Public could be waived upon their mutual agreement on 24 April 2018, supported and corroborated by several parties.²⁵ He was able to verify the genuineness of the signature of the acknowledging party and ascertain that the document was the product of his free act and Deed.
2. The “Acknowledgment” in the Deed attesting that the Intia children personally appeared before him was a pure and simple surplusage. They need not be mentioned at all as their mother, Complainant Dorotea, was representing them in the execution of said Deed as their attorney-in-fact. Respondent stressed that the said fact was very obvious in the opening statement in the Deed that Complainant Dorotea was the Attorney-in-Fact of her co-complainants.²⁶
3. The usury law has been abolished, allowing parties to agree on the rate of interest that they have mutually consented to. As such, the 3% interest was not excessive or unconscionable.²⁷
4. On the statement in the Deed that the subject property is free from liens and encumbrances, the Complainants lost sight of the fact that despite said statement, the annotated lien pursuant to Section 4, Rule 74 of the Rules of Court will just be carried over to the new title. Such a lien cannot legally preclude the owner from transacting with

²⁴ Id. at 40-45.

²⁵ Id. at 32.

²⁶ Id. at 279.

²⁷ Id.

the said property in favor of another and is thus an honest and harmless surplusage.²⁸

Respondent also points out that the criminal cases that arose from the Special Power of Attorney notarized in Marilao, Bulacan have been dismissed due to the withdrawal of the Informations by the Office of the Provincial Prosecutor as approved by the courts.²⁹

Respondent submits that if his interpretation of the law is wrong, he asks for human understanding and forgiveness, citing that he is an 80-year-old poor lawyer trying to make an honest living and humbly pleads for a mitigation of any liability for said act.³⁰ In his Position Paper,³¹ Respondent admits to acting imprudently and exercising poor judgment in notarizing the subject Deed. Due to his omissions, he reiterates his humble prayer for understanding and human consideration.³²

Report and Recommendation of the IBP

In his Report and Recommendation³³ dated 10 June 2020, the Investigating Commissioner concluded that the Acknowledgement in the subject Deed contains a misrepresentation of a statement of fact when Respondent claimed that Complainant Dorotea personally appeared before him in Las Piñas City on 08 October 2018, when she was in fact in Australia.³⁴

Respondent also admitted that said Deed was signed and executed on 24 April 2018 at the house of his long-time client, Lita Bato Aleonar located at No. 840 Acacia Avenue Extension, Ayala Alabang Village, Alabang, Muntinlupa City, which is not covered by his commission as a Notary Public only for Las Piñas City.³⁵

In citing *Dela Rama, et al., v. Papa, et al.*,³⁶ the Report emphasized that the requirements of law for a proper acknowledgment may not be dispensed with, thus:³⁷

It appears that respondents had previously laid stress on the claim that it is a common practice in real estate transactions that deeds of conveyance are signed on separate occasions by the vendor and the vendee,

²⁸ Id. at 279-280.

²⁹ Id. at 280.

³⁰ Id. at 36.

³¹ Id. at 217-224.

³² Id. at 218.

³³ Id. at 267-283.

³⁴ Id. at 281.

³⁵ Id.

³⁶ 597 Phil. 227 (2009).

³⁷ Id. at 281.

and not necessarily in the presence of the notary public who notarizes the document but they adduced nothing to support their claim but their mere say-so. **Assuming *arguendo* that is indeed the common practice in the business, we quite frankly do not care. The clear requirements of law for a proper acknowledgment may not be dispensed with simply because generations of transactions have blithely ignored such requirements.** If it is physically impossible for the vendor and the vendee to meet and sign the deed in the presence of one notary public, there is no impediment to having two or more different notaries ratifying the document for each party that respectively appears before them. This is the prudent practice adopted by professional law enterprises, and it is a correct measure in consonance with the law.³⁸(Emphasis supplied).

The Report further underscores Canon 1, Rule 1.01 of the Code of Professional Responsibility that states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Likewise, Respondent took an oath that he “will do no falsehood.”³⁹

Due to the falsity in the Acknowledgment of the assailed Deed, the Report recommended that the Respondent be found administratively liable for violating Rule IV, Section 2(b)(1) of the Rules on Notarial Practice, Canon 1, Rule 1.01 of the Code of Professional Responsibility, and his Lawyer’s Oath, with the following penalty:

After considering Respondent’s admission of fault and plea for liberality in the imposition of the penalty, undersigned Commissioner’s recommends that Respondent be suspended from the practice of law for one (1) year, revocation of his existing notarial commission, and disqualified as a Notary Public for one (1) year with stern warning that a repetition of another or similar infraction will merit a more severe penalty.⁴⁰

In a Resolution⁴¹dated 19 November 2021, the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline modified the recommended penalties to:

RESOLVED, to MODIFY, as it is hereby MODIFIED the Report and Recommendation of the Investigating Commissioner, and to recommend instead the imposition upon Respondent Atty. Herminio T. Ubana, Sr. of the penalties of – 1) **SUSPENSION from the practice of law for a period of One (1) Year**; 2) the IMMEDIATE REVOCATION of his NOTARIAL COMMISSION, if subsisting, and 3) DISQUALIFICATION from being commissioned as Notary Public for Two (2) Years, but without the issuance of a Stern Warning, after taking into consideration the facts of the case. (emphasis not ours)

³⁸ *Spouses Dela Rama v. Papa*, 597 PHIL 227-261 (2009).

³⁹ *Rollo*, p.283.

⁴⁰ *Id.*

⁴¹ *Id.* at 265.

The Ruling of the Court

The Court finds merit in the Complaint and adopts the IBP's recommendation with modification.

The Court has repeatedly underscored that the act of notarization is *not* a meaningless, empty or a mere routine act.⁴² It is imbued with public interest because it converts a private document into a public document, thereby rendering it admissible in court without further proof of its authenticity. As such, notaries public are mandated to faithfully observe the basic rules on notarial practice so as not to undermine the public's confidence in the integrity of notarized documents.⁴³ In this light, lawyers commissioned as notaries public have been reminded that compliance with the Notarial Law is in line with their solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any.⁴⁴

In *Caronongan v. Ladera*,⁴⁵ the Court highlighted that that a notary public is authorized to notarize a document provided that the person or persons who signed it are the same ones who executed and personally appeared before him or her to attest to the contents and the truth of the matters therein stated. This is to ensure that the notarized document is the free act of the party or parties to it.⁴⁶

On the imposition of penalty, in *Spouses Balbin v. Baranda*,⁴⁷ the Court explained that when a document is notarized despite the non-appearance of a party or an affiant before the notary public, the Court imposes a suspension from the practice of law from six (6) months to one (1) year:

As regards the penalty to be imposed, recent jurisprudence shows that when a document is notarized despite the non-appearance of a party or an affiant before the notary public, the Court generally imposes the following penalties upon the latter: (a) immediate revocation of his notarial commission, if still existing; (b) disqualification from being appointed as a notary public for a period of two (2) years; and (c) suspension from the practice of law — the terms of which vary based on the circumstances of each case. In *Ferguson v. Ramos*, *Malvar v. Baleros*, and *Yumul-Espina v. Tabaquero*, the erring lawyers were suspended from the practice of law for six (6) months; while in *Orola v. Baribar*, *Sappayani v. Gasmen*, and *Isenhardt v. Real*, the suspensions imposed were for a period of one (1) year.⁴⁸

⁴² *Caronongan v. Ladera*, A.C. No. 10252, 11 December 2019.

⁴³ *Id.*

⁴⁴ *Spouses Balbin v. Baranda, Jr.*, A.C. No. 12041, 5 November 2018.

⁴⁵ *Caronongan v. Ladera*, A.C. No. 10252, 11 December 2019.

⁴⁶ *Id.*

⁴⁷ A.C. No. 12041, 5 November 2018.

⁴⁸ *Id.*

The Court finds that a suspension from the practice of law for six (6) months would suffice considering the Respondent's admission of his error and the fact that he is already an octogenarian.

WHEREFORE, the Court **ADOPTS** the Resolution, dated 19 November 2021, of the Integrated Bar of the Philippines-Board of Governors subject to the **MODIFICATION** that Atty. Hermino T. Ubana, Sr. is **SUSPENDED FOR SIX (6) MONTHS FROM THE PRACTICE OF LAW**. His notarial commission is **IMMEDIATELY REVOKED** if subsisting. Further, he is **DISQUALIFIED** from being commissioned as Notary Public for two (2) years.

He is **DIRECTED** to report the date of his receipt of this Resolution to enable this Court to determine when his suspension shall take effect.

Let copies of this Resolution be entered in the personal records of Atty. Hermino T. Ubana, Sr. as a member of the Philippine Bar, and furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for proper dissemination to all courts in the country.

SO ORDERED.

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

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