



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**SPOUSES ELMER and MILA
SORIANO,**

Complainants,

A.C. No. 10540

[Formerly CBD Case No. 07-2105]

Present:

PERALTA, C.J., Chairperson,
REYES, J., JR.,
CARANDANG,*
LAZARO-JAVIER, and
INTING,** JJ.

- versus -

**ATTY. GERVACIO B. ORTIZ, JR.
and ATTY. ROBERTO B. ARCA,**
Respondents.

Promulgated:

NOV 28 2019

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DECISION

PERALTA, C.J.:

Before the Court is a Complaint¹ filed by complainants, the spouses Elmer and Mila Soriano (*the Spouses Soriano*), on October 23, 2007 against respondents, Atty. Gervacio B. Ortiz, Jr. and Atty. Roberto B. Arca, for allegedly notarizing documents without the presence of the complainants in violation of the Notarial Law.

The antecedent facts are as follows:

In their complaint, the Spouses Soriano alleged that they are the registered owners of a parcel of land located at Barrio Bagbagan, City of Muntinlupa, covered by Transfer Certificate of Title (TCT) No. 162098. According to them, they intended on selling the property to one of their

* Additional member in lieu of Associate Justice Alfredo Benjamin S. Caguioa, Special Order No. 2734 dated November 8, 2019.

** Additional member per Special Order No. 2726 dated October 25, 2019.

¹ Rollo, pp. 2-5.

sisters. In order to assess the amount of tax that will be due from such sale, Marciana Reyes, sister of complainant Mila Soriano, entrusted the owner's copy of the title to a certain Susan Manito sometime in February 2006. But the title and other pertinent documents were never returned to Reyes. Subsequently, Reyes came to know from persons close to a certain Gaila Montero that the title was mortgaged to the latter in the amount of ₱260,000.00. At first, Reyes was afraid to tell the Spouses Soriano about her discovery, but when she could no longer solve the problem herself, she had no choice but to inform them of the same. The Spouses Soriano immediately went to the house of Montero, introduced themselves to her, and tried to secure a copy of the alleged mortgage contract. Montero told them to come back the next day. Upon their return, the Spouses Soriano were surprised to be confronted by persons claiming to be from the Criminal Investigation and Detection Group (CIDG) who wanted to take them to Camp Crame, Quezon City but they refused to go.²

Instead, the Spouses Soriano went to the Register of Deeds (RD) of Muntinlupa City where they discovered that a Deed of Mortgage dated March 8, 2006 was registered and annotated at the back of their title under Entry No. 64418. Based on said deed, they appear to be the mortgagors of the subject property covering a loan obtained from Montero in the amount of ₱60,000.00. They, however, assail the authenticity of the Deed of Mortgage. They deny the signatures appearing thereon for being clearly different from their actual signatures. They also deny having appeared before the notary public listed thereon in the persons of respondents Ortiz and Arca. Neither have they authorized any other person to mortgage the subject property on their behalf. According to the Spouses Soriano, moreover, the Community Tax Certificates (CTC) indicated in the deed do not belong to them for in the acknowledgment portion thereof, it was stated that their certificates were secured from the City of Manila when they are residents of Molino, Cavite.³

On August 16, 2006, the Spouses Soriano went back to the RD of Muntinlupa City and to their surprise, a new annotation appeared on their title. This time, a document entitled Supplemental to the Deed of Mortgage was registered under Entry No. 64467 and was notarized by respondent Arca. In the said document, it again appears that the Spouses Soriano secured an additional ₱200,000.00 from Montero using the same title as collateral. As with the first annotation, the Spouses Soriano deny having mortgaged the subject property to Montero for an additional loan, having signed the said Supplemental, and having appeared before respondent Arca.⁴ Consequently, they filed a civil case for the recovery of the owner's duplicate copy of TCT and nullification of mortgages. They also caused the

² *Id.* at 2-3.

³ *Id.* at 3-4.

⁴ *Id.* at 4.

annotation of the Notice of *Lis Pendens* on the title under Entry No. 64808 and inscribed on August 29, 2006.⁵

By way of defense, respondent Ortiz denied having prepared and notarized the Deed of Mortgage between the Spouses Soriano and Montero. He also maintained that the parties never appeared before him on March 8, 2006. According to Ortiz, he was conferred a notarial commission in Manila for two (2) years beginning on the year 2004 and ending on December 31, 2005. In the early part of 2005, however, Ortiz received information that his signature was being forged. For this reason, he made a written request to the Executive Judge of Manila for the pre-termination of his notarial commission, which was granted on June 4, 2005. Thus, for all legal intents and purposes, his notarial commission for the City of Manila ended on June 4, 2005. Ortiz, subsequently, applied for another notarial commission, this time, at the City of Makati which was granted from June 21, 2005 to December 31, 2006. From this, it is clear that on March 8, 2006, the date of the execution of the Deed of Mortgage, Ortiz was no longer commissioned as notary public in the City of Manila.⁶

For his part, respondent Arca did not deny notarizing the subject documents and even admitted the same. Instead, he refuted the claims of the Spouses Soriano that they never appeared before him and that the signatures on the documents do not belong to them. For Arca, these claims are self-serving and must not be sustained. He also maintained that since the Spouses Soriano sought the revocation of the mortgages, they cannot thereafter assert the nullity thereof since revocation implies that the mortgages are valid. Finally, Arca insisted that it is the Executive Judge and not the Commission on Bar Discipline that has jurisdiction over the case, because the Spouses Soriano were seeking to discipline him as a notary public and not as a lawyer.⁷

In a Report⁸ dated September 21, 2010, the Investigating Commissioner of the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) recommended that the complaint against respondent Ortiz be dismissed for insufficiency of evidence. But with respect to respondent Arca, it was recommended that he be suspended from the practice of law for a period of one (1) year, that his notarial commission be revoked, and that he be disqualified from reappointment as notary public for a period of two (2) years.⁹

⁵ *Id.* at 4-5.

⁶ *Id.* at 80-83.

⁷ *Id.* at 26-41.

⁸ *Id.* at 372-388.

⁹ *Id.* at 388.

In a Resolution¹⁰ dated December 29, 2012, the Board of Governors (BOG) of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner. With respect to respondent Ortiz, the BOG dismissed the complaint against him. With respect to respondent Arca, the BOG resolved to suspend him from the practice of law for a period of six (6) months, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years.

In another Resolution¹¹ dated March 22, 2014, however, the BOG affirmed, with modification, its earlier resolution, and reverted back to the recommendation of the Investigating Commissioner. Thus, with respect to respondent Ortiz, the BOG resolved to dismiss the complaint against him. With respect to respondent Arca, the BOG resolved to suspend him from the practice of law for a period of one (1) year, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years.

In his Petition for Review, respondent Arca questions why the BOG, after modifying the recommendation of the Investigating Commissioner to suspend him from the practice of law from one (1) year to six (6) months, reverted back to the one (1) year-suspension that the Investigating Commissioner originally recommended without citing any reason for its change of mind. Ultimately, Arca seeks the Court's compassion considering that the instant case is his first offense. Citing several jurisprudential teachings, he claims that the penalty of suspension from the practice of law for a period of one (1) year and disqualification from reappointment as notary public for a period of two (2) years is inappropriate since his omission relates to his actuations as notary public and not as a lawyer. Instead, he believes that the penalty of suspension from the practice of law for a period of three (3) months and disqualification from reappointment as notary public for a period of three (3) years is more in line with his infraction.¹²

The Court's Ruling

In view of the circumstances of the instant case, the Court finds no cogent reason to reverse the findings of the BOG.

¹⁰ *Id.* at 370-371.

¹¹ *Id.* at 369.

¹² *Id.* at 400-415.

With respect to respondent Ortiz, the Court sustains the dismissal of the complaint against him for insufficiency of evidence. As the Investigating Commissioner found, it appears that Ortiz had no participation in the execution of the questioned documents as he immediately sought the pre-termination of his notarial commission upon his discovery of forgery. He exercised earnest efforts to protect the sanctity of his notarized documents. Indeed, the fact remains that on the date of the execution of the Deed of Mortgage, Ortiz was no longer commissioned as notary public in the City of Manila.

As for respondent Arca, the Court likewise sustains the BOG's resolution to suspend him from the practice of law for a period of one (1) year, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years. In his petition, Arca argues that the case of *Tabas v. Atty. Mangibin*¹³ used by the Investigating Commissioner as basis for his penalty is inapplicable to his case. Instead, he contends that what should govern are Our rulings in *Soriano v. Atty. Basco*¹⁴ where we merely imposed the penalty of disqualification from being commissioned as notary public and *Father Aquino v. Atty. Pascua*¹⁵ where we imposed a lighter penalty of suspension from the practice of law for a period of three (3) months.

The contention is devoid of merit.

In *Soriano*, Atty. Basco was disqualified from being commissioned as notary public for a period of one (1) year for his failure to enter in his notarial register pertinent information relating to a Deed of Sale he had notarized as well as his failure to send a copy of the document to the clerk of court. The Court therein ruled that these formalities are mandatory and cannot simply be neglected.¹⁶

In *Aquino*, Atty. Pascua was suspended from the practice of law for a period of three (3) months and revoked his notarial commission for his failure to make the proper entry in this notarial register. While Pascua claims that the omission was unintentional due to the oversight of his staff, the Court held that "his failure to enter into his notarial register the documents that he admittedly notarized is a dereliction of duty on his part as a notary public and he is bound by the acts of his staff."¹⁷ The Court, nonetheless, took into consideration the fact that the omission was Pascua's first offense. Thus, a three (3)-month suspension was imposed.

¹³ 466 Phil. 296 (2004).

¹⁴ 507 Phil. 410 (2005).

¹⁵ 564 Phil. 1 (2007).

¹⁶ *Soriano v. Atty. Basco*, *supra* note 14, at 414.

¹⁷ *Father Aquino v. Atty. Pascua*, *supra* note 15, at 4.

The aforementioned pronouncements, however, cannot find application in the present case. Instead, we agree with the Investigating Commission and hold that the doctrine enunciated in *Tabas* is more appropriate. There, the Court suspended Atty. Mangibin from the practice of law for a period of one (1) year and disqualified him from being commissioned as notary public for a period of two (2) years for notarizing a document without ascertaining their identities. In particular, he notarized a document upon the request of a certain person claiming to be a mortgagee which discharged a piece of real property from a mortgage attached thereto. It turns out, however, that she was not the real mortgagee of the property and because of his recklessness, the mortgagor was able to mortgage the property again, this time, in her favor. The Court found that Mangibin should have requested other forms of identification from the false mortgagee who merely presented her CTC, considering the ease with which CTCs may be obtained and the gravity of the effects of his notarization. Because of his carelessness, Mangibin merely took the word of the false mortgagee and failed to notice the glaring difference in the signature of the real mortgagee in the deed of real estate mortgage from her purported signature in the questioned discharge of real estate mortgage.¹⁸

Similarly, in *Agbulos v. Atty. Viray*,¹⁹ the Court suspended Atty. Viray from the practice of law for one (1) year and disqualified him from being commissioned as notary public for a period of two (2) years for notarizing a document without ascertaining the identity of the affiant and merely relying on the assurance of his client and the presentation of a CTC despite the requirement of the rules on the presentation of competent evidence of identity such as an identification card with photograph and signature. The Court therein ruled that with this indiscretion, Viray failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery.²⁰ Thus, in *Agbulos*, we pronounced:

* To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.

x x x x

Respondent's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but

¹⁸ *Tabas v. Atty. Mangibin*, *supra* note 13, at 304.

¹⁹ 704 Phil. 1 (2013).

²⁰ *Id.* at 7.

also in undermining 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 responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.²¹

Applying the foregoing pronouncements to the instant case, the Court finds the recommendations of the Investigating Commissioner and BOG to be well taken. We remain unconvinced by the excuses interposed by Arca who, in his Answer to the Complaint, essentially relied on the presumption that he performed his duties according to law. In his Petition, moreover, Arca no longer denied the accusations against him and simply sought the Court's compassion for a lesser penalty. But to recall, Arca notarized the subject documents on the mere presentation of CTCs secured from the City of Manila when the Spouses Soriano are residents of Molino, Cavite. In addition, it has not escaped the Court's attention that Arca negligently notarized not just one mortgage on March 8, 2006 for ₱60,000.00 but two mortgages, the second one on May 8, 2006 for an additional ₱200,000.00. As such, we cannot grant Arca's request for the mitigation of his penalty in light of applicable case law that dictate otherwise.

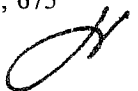
Thus, in view of the foregoing, the Court finds the penalty of suspension from the practice of law for a period of one (1) year, revocation of notarial commission, if commissioned, and disqualification from reappointment as notary public for a period of two (2) year is in line with existing jurisprudence.²² Indeed, notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.²³

WHEREFORE, with respect to respondent Atty. Gervacio B. Ortiz, Jr., Court resolves to **DISMISS** the complaint against him for insufficiency of evidence. With respect to respondent Atty. Roberto B. Arca, however, the Court finds him **GUILTY** of breach of the 2004 Rules on Notarial

²¹ *Id.* at 7-9.

²² *Id.* at 9, citing *Isenhardt v. Atty. Real*, 682 Phil. 19, 27 (2012); *Atty. Linco v. Atty. Lacebal*, 675 Phil. 160, 168 (2011); *Lanuzo v. Atty. Bongon*, 587 Phil. 658, 662 (2008).

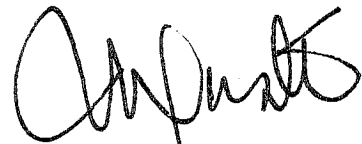
²³ *Id.* at 8.



Practice and the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years, effective immediately. He is also **WARNED** that a repetition of the same or similar act in the future shall be dealt with more severely.

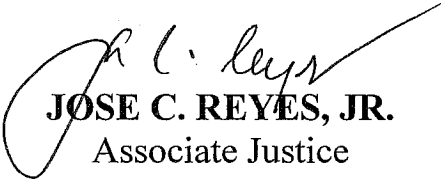
Let all the courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent Roberto B. Arca's personal record.

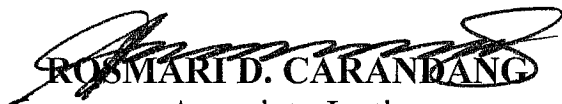
SO ORDERED.

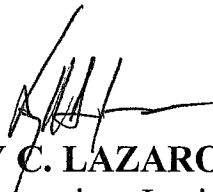



DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:


JOSE C. REYES, JR.
Associate Justice


ROSMARID. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice