

RE: ATTY. OCTAVIO D. FULE

A.C. No. 1327. July 27, 1987

Ponente: CORTES, J.

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CORTES, J.:

This administrative case originated from a decision of the Court of Appeals in C.A.-G.R. No. 34810-R entitled *Prudential Bank and Trust Co., Plaintiff-Appellant vs. Sy Chi & Co., et al., Defendants-Appellants*, the dispositive portion of which includes a paragraph which reads:

Let copy of this decision be furnished the Honorable Solicitor General for his information and guidance with respect to the questionable actuation of notary public Octavio D. Fule.

Upon receipt of the decision the Solicitor General in turn sent this Court a copy with the observation that "(S)ince this Office may eventually be required to conduct the investigation in the premises, we are simply forwarding a copy of the decision to this Honorable Court for its appropriate action." On June 4, 1974 the Court by resolution required Atty. Fule to Comment on the portion of the Court of Appeals decision referring to his "questionable actuation" as notary public. Comment having been made, the Court resolved to refer the case to the Solicitor General for investigation, report and recommendation. The report and recommendation were submitted on March 6, 1987.

The alleged questionable acts of the respondent concerning specified trust receipts notarized by him consist of apparent intercalations in specified trust receipts documents and his failure to enter into the notarial registry the names of the parties executing the instruments. As summed up by the Court of Appeals

The indications are that the back portions of the trust receipts, Exh. "D", "E" and "F" were tampered with. Intercalations were inserted to make it appear that defendant Isidro Ongsip signed said trust receipts as a party and not as a mere witness. The typewriter used in the acknowledgment was different from the typewriter used in filling the blanks on the front pages of the trust receipts. It is very apparent that the notary public had, as an afterthought inserted the participation of Isidro Ongsip in the acknowledgment in the trust receipts, Exh "D" and "E". Thus in both trust receipts, Exhs. "D" and "E" the reference to defendant Isidro Ongsip appears at the last sentence. That the last sentence was inserted in both trust receipts is apparent from the fact that no space remains between the last line and the words "WITNESS MY HAND AND SEAL." In fact, in the trust receipt, Exh. D the words "this document as guarantor," is on the same line as the words "WITNESS MY HAND AND SEAL.

As regards the trust receipt, Exh. "F", it is very apparent that the words "guaranteed by:" over the signature of defendant Isidro Ongsip and the acknowledgment were typed after said defendant had signed the same. The typewriter used in typing said words and acknowledgment is manifestly different from the typewritten (sic) word "Sy Chi Eng and Company" over the signature of Sy Chi Eng and the words on the face of said trust receipt.

* * * * *

The foregoing discrepancies and irregularities could have been explained only by the notary public, Octavio D.

Fule. But the plaintiff, without explanation, failed to present as witness said notary public.

And finally, the pertinent pages of the notarial register of the notary public Octavio D. Fule (Exhs. "6-Ongsip" and "6-D Ongsip") on which the trust receipts, Exh. "D", as Exh. "D", as document No. 185, page 38, Exh. "F" as document No. 271, page 56 were recorded show that only Sy Chi Eng acknowledged said documents. Defendant Isidro Ongsip is not mentioned at all. It is elementary that a notary public is duty bound to enter in his notarial register the names of the persons executing, swearing to or acknowledging the instrument. (Section 246, Revised Administrative Code). (pp. 12-14, rec.).

In the COMMENT filed with the Court, the respondent stated that he did not testify at the trial because the Bank's lawyer did not call him as witness. He also explained his functions in the bank and the circumstances under which the trust receipts were notarized and the entries in the notarial registry made.

Before January 10, 1958 trust receipts executed by clients of the Prudential Bank did not have to be acknowledged. However, on said date the Board of Directors of the Bank by resolution required such acknowledgment and the requirement continued until September 1, 1961 when by another resolution the requirement was lifted. Inquiry into the functions of the respondent reveals that:

He was appointed notary public for, and in the City of Manila on January 13, 1958 and renewed his commission biennially thereafter; that the trust receipts involved in this case were notarized by him on January 28, 1959, January 28, 1959 and February 27, 1959, respectively. At that time, he was secretary to the president of Prudential Bank and head of the Collection Section of said company. Among his duties were to notarize documents including those of the nature similar to the documents subject of this case.

As officer of Prudential Bank, he was assigned two clerk-typists who had to assist him even in the actual work of entering documents in his notarial book by reason then of his great volume of work. The trust receipts are printed forms which, at the back thereof, contained printed acknowledgments. It was his clerk typist who typed into these printed forms the acknowledgments for his correction prior to actual notarization. Whenever inadequate, he instructed insertions rather than typing of new forms for the latter practice would necessarily entail greater volume of work. It is only where corrections were extensive that new forms were typed instead of making insertions or corrections. (Report and Recommendation, pp. 4-5).

The respondent described in detail the circumstances under which the trust receipts were notarized, thus:

1) RE: Trust Receipts, Exhibits D and E made Annexes 'B' and 'C' hereof, both acknowledged January 28, 1959 as Documents 184 and 185

On January 28, 1959 (date of notarization), two drafts (Exhibits G and H made Annexes 'E' and 'F' hereof and the two above- stated trust receipt forms were brought by the clients and the representative of the foreign department to me for notarization. My desk was only a few meters across those of foreign department, all our space having been open and without partitions. My typist Mr. Rodolfo Manalese (now branch manager of the Metropolitan Bank and Trust Co. — please see his affidavit) typed out the acknowledgments into the back sides of the two trust receipts (Exhs. D and E). Upon submission to me, I noticed that the acknowledgments did not include that of the joint and several guarantor Mr. Isidro Ongsip. I saw that Mr. Ongsip had accepted the two drafts 'jointly and severally' as clearly shown on their faces. So I instructed Mr. Manalese — in the presence of the guarantor Mr. Isidro Ongsip and Mr. Sy Chi Eng — that he should get the residence tax certificate of Mr. Ongsip and add its data into the acknowledgments. Mr. Ongsip presented his residence tax certificate (which he then only very recently obtained, i.e., the date of his residence tax certificate was January 14, 1959 or just 14 days before) and Mr. Manalese typed this addition into both acknowledgments: 'Isidro Ongsip with Res. Cert. No. A-0165153 issued at Manila on Jan. 14, 1959 acknowledged this document as guarantor.' (Incidentally, if Mr. Ongsip was a mere witness, he would not have exhibited his residence tax certificate and he should have signed in the space under 'Witnesses:' rather than under the printed joint and solidary guaranty

provision.)

Then Messrs. Sy Chi Eng and Isidro Ongsip signed and I notarized the trust receipts.

2) RE: Trust Receipt, Exhibit F, Annex 'D' hereof acknowledged February 27, 1959 as Document 271

In the same way that the first two trust receipts were prepared in the Foreign Department, that is, the amount of the bill, description of security, marks and numbers, vessel, date, and execution of the trust receipt were typed into the printed forms by the Foreign Department, this third trust receipt executed a month later was prepared. In the same way also, the acknowledgment was typed in by Mr. Manalese of my section. This time, Mr. Manalese made no mistake in composing the acknowledgment clause. He had included the joint and several guarantor Mr. Isidro Ongsip in the acknowledgment.

So, after Messrs. Sy Chi Eng and Isidro Ongsip signed, I notarized the trust receipt. (Report and Recommendation, pp. 5-7).

The respondent further stated that he had no reason to prejudice Mr. Isidro Ongsip, a big businessman, who among other things was a substantial stockholder of Prudential Bank where respondent was employed.

The Solicitor General's investigation and examination of the documents and consideration of the established facts which preceded the issuance of the trust receipts yielded the following findings:

The trust receipts in question upon scrutiny appear to be the standard forms used by the Prudential Bank and Trust Company (PBTC) in the ordinary course of its banking business. Closer examination likewise reveals that said receipts, in its entirety, consists of two parts. The main trust agreement which appears on the front page and ends with the signature of the executor and the subsidiary guaranty provision at the reverse side whereon is also written the notarial acknowledgment clause.

Respondent stands charged of misconduct in office approximating falsification in that as a notary public "intercalations were made to make it appear that defendant Isidro Ongsip signed the trust receipt as a party and not a mere witness" (p. 12, rollo). This conclusion was based on Mr. Ongsip's claim that "at the time the answering defendant affixed his signature at the back of Annexes "A", "C" & "E", there were no typewritten words at the back thereof; that these typewritten words and the figures were subsequently placed without the knowledge or consent of the answering defendant" (Report and Recommendation, pp. 13-14.)

Taking into account the respondent's explanation and the attached documents, the Solicitor General concluded that the evidence on record indicates that the intercalations did not amount to falsification, that they were made with the knowledge and consent of Mr. Ongsip and that the respondent's acts did not warrant disciplinary sanctions but that the respondent's failure to enter in his notarial register Mr. Ongsip's name as the person who either executed, swore to or acknowledged the receipts in question amounted to neglect. Respondent could not relieve himself of this legal duty by delegating it to another person. For this failure to make the proper entry in the notarial registry he should be warned to be more careful in the future in the exercise of his duties as notary public and a similar complaint in the future will merit a stiffer penalty.

The Court having examined the full record of this administrative case finds the explanation of the respondent satisfactory, accepts the report and adopts the recommendation of the Solicitor General. Taking the referral in the dispositive portion of the Court of Appeals decision in C.A.-G.R. No. 34816-R as the complaint, the Court Resolved to D I S M I S S the same, finding no basis for disciplinary action against the respondent. However, for having failed to make appropriate entry in his notarial registry, the respondent is admonished to exercise due care in the performance of his duties as notary public and cautioned that a similar lapse in the future will be dealt with more severely.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio--Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Sarmiento, JJ., concur.

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