

DANILO M. CONCEPCION, COMPLAINANT, VS. ATTY. DANIEL P. FANDIÑO, JR., RESPONDENT.

A.C. No. 3677. June 21, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint for disbarment filed against respondent Atty. Daniel P. Fandiño, Jr. for gross misconduct, deceit and malpractice for having allegedly notarized several documents without having been appointed or commissioned as notary public. The complaint alleges:

1. Petitioner is of legal age, single, with residence and postal address at Barangay Bantayan, Calamba, Laguna, while defendant is a member of the Philippine Bar, married, with office address at R-305 A. Lina Building, Crossing, Calamba, Laguna where it (sic) may be served with summons and other processes of this Honorable Tribunal;
2. On October, 1989 in Calamba, Laguna, without being appointed nor commissioned as Notary Public the defendant signed and entered his name as notary public in a Deed of Absolute Sale purportedly executed by one Damian Piamonte in favor of Tomahawk Development Corporation over a lot in Barangay Makiling, Calamba, Laguna for a consideration of P3,048,045.00 and allegedly entered the same in a non-existing Notarial Book as Doc. No. 483, Page No. 97, Book No. 7, Series of 1989, copy of the Deed of Absolute Sale is hereto attached as Annex "A" and the signature of the defendant as Annex "A-1", the certification by the Clerk of Court of Binan, Laguna dated March 29, 1990 that the defendant was not appointed as Notary Public in the Province of Laguna for the year 1989 as Annex "B";
3. In the foregoing transaction of the sale of a lot in Bo. Makiling, Calamba, Laguna where herein parties were authorized to negotiate its sale at 5% commission, defendant did not pay the plaintiff the sum of P157,572.00 as his share resulting in the filing of a suit for a sum of money by the herein plaintiff against the defendant before the Regional Trial Court of Calamba, Laguna and a criminal suit for Usurpation of Official Function of a Notary Public, a copy of the complaints both criminal and civil are hereto attached marked as Annexes "C" and "D";
4. Likewise, on December 10, 1987, the defendant signed and entered his name as Notary Public in Calamba, Laguna on a Deed of Absolute Sale for P2,800,000.00 of a lot in Calamba, Laguna again without being appointed nor commissioned as such as shown by the certification of the 4th Judicial Region, Office of the Clerk of Court, Calamba, Laguna dated June 5, 1991 that the defendant had not been appointed nor commissioned as Notary Public by the Court for the years 1985, 1986, 1987, and 1988 is hereto attached as Annex "E" and the Deed of Sale as Annex "D", respectively, including the signature of the defendant as Annex "D-1";
5. Pursuant to Rule 138 of the Rules of Court the defendant may be removed from his office by this Honorable Tribunal for any deceit, malpractice or other gross misconduct of which the foregoing facts are tenable as within the ambit of deceit, malpractice and gross misconduct intended by the Rules of Court against erring members of the Philippine Bar.

WHEREFORE, it is prayed of this Honorable Tribunal that the defendant be REMOVED from his office as member of the Philippine Bar.[1]

Photocopies of the documents allegedly notarized by respondent are attached to the complaint.

In his comment, respondent denies that he ever notarized the documents in question and alleges that the complaint was made merely to pressure him to give P100,000.00 to complainant as commission for certain real estate transactions. According to respondent, complainant in fact filed criminal and civil suits against him based on the same allegations made in this case. The criminal complaint was dismissed by the prosecutor for lack of probable cause, while in the civil case, a demurrer to evidence has been filed. Respondent alleges:

a) Respondent was accused of having notarized the alleged deed of sale dated October 1989, and in support thereof an alleged xerox copy was attached to the Complaint. In the civil and criminal complaint filed against Respondent, Complainant was asked to produce authentic copy of that Deed of Sale because Respondent cannot recall having notarized such a document. His only participation in that transaction was to refer the brokering of the sale of land to Mr. Rodolfo Tingzon. If ever there exists seemingly authentic copy of said deed, then that is a falsification made by Complainant.

The alleged deed was never registered. And neither the seller nor the buyer ever produced the alleged document. It cannot be basis for a complaint. The document is not admissible in evidence being mere xerox copy

He must have falsified the alleged signature of respondent or must have caused its falsification. The evidence on record is not credible but most importantly, it proceeded from a non-credible witness

The act of Complainant in filing one case after another, for the same alleged act, in different fora, and failing to prove the charge is forum shopping, and is considered malpractice and condemnable and should not be tolerated

b) Respondent was likewise charged for allegedly having notarized a Deed of Sale on December 15, 1987. He could not have notarized the said deed. His services professional or business, have never been secured by the seller, nor by the buyers. He has never transacted any business with them in any capacity, as a lawyer or a private person, and so he could not have served them by notarizing the questioned document.

What is intriguing is that why did Complainant know this transaction and document? Could he again abuse the trust of Respondent by falsifying his signature or having it signed surreptitiously in Respondent's unguarded moments? Why did he come out only now, almost four years after the execution of the alleged document? . . .

The motive of complainant, no doubt, is to harass, embarrass and blackmail Respondent. Lawyers falling under this trap of unscrupulous and depraved person deserve the protection of the Court.[2]

This matter was referred to the Integrated Bar of the Philippines for investigation, report and recommendation. On November 5, 1998, the IBP Board of Governors passed a resolution adopting the report and recommendation of the investigating commissioner that the complaint be dismissed for lack of merit. The report of Investigating Commissioner Milagros V. San Juan, states in pertinent parts:

The records of the case show that the controversy between the parties was an off shoot of a sale of a piece of property where the complainant received a commission which he believes to be insufficient.

In his original complaint petitioner attached a copy of Deed of Sale executed by Damian Piamonte which was allegedly notarized by the respondent, together with a certification from the Clerk of Court with the Regional Trial Court of Laguna to the effect that Atty. Daniel P. Fandino, Jr. of Calamba Laguna has not applied nor was appointed as Notary Public of the Province of Laguna.

The issue to be resolved in this case is whether or not the respondent is guilty of malpractice and gross misconduct which makes him unfit as member of the Philippine Bar.

A study of the document on which the complaint is anchored shows that the photocopy is not a certified true copy neither was it testified on by any witness who is in a position to establish the authenticity of the document. Neither was the source of the document shown for the participation of the complainant in its execution. The certification issued by the Regional Trial Court clearly states that a certified true copy of alleged Deed of Sale dated October 1989 and two (2) alleged Special Power of Attorney dated July 1989 can not be issued by said office. This fact gives rise to the query, where did these documents come from, considering also the fact that respondent vehemently denied having anything to do with it. It is worthy to note that the parties who allegedly executed said Deed of Sale are silent regarding the incident.

To warrant disciplinary action to be meted out to the respondent, the evidence must be clear and credible leaving no doubt to the mind that indeed said document was notarized by respondent sans legal authority to do so. The several documents cited in the amended complaint likewise will fail for lack of evidence to support the same. The query of the respondent is well taken --- where, when and how did the complaint come into possession of the documents when he is not even privy to the acts reflected thereon. In view of the foregoing facts, we are inclined to believe that the respondent here is at the receiving end of harassment and blackmail for his failure to comply with the claim of the complainant to a bigger slice of the agent's fee which was granted to them by the real estate broker.[3]

On February 4, 1999, complainant filed his "comment/opposition" which the Court, in a resolution dated April 12, 1999, treated as a motion for reconsideration of the IBP resolution recommending the dismissal of his complaint. In addition, he filed several motions asking the Court to declare IBP Commissioner Benjamin Bernardino, from whom Commissioner San Juan took over the case, in contempt of this Court for his alleged failure to resolve the case with dispatch.

First. Complainant contends that the investigating commissioner should not have singled out a particular photocopied document (Exh. D) from the numerous documents, of which certified true copies were submitted in evidence. At all events, he claims that he submitted a certified copy of all documents, including Exh. D, when he filed a supplemental complaint on October 3, 1995.[4]

The allegation has no merit. We have scrutinized the records of this case, but we have failed to find a single evidence which is an original copy. All documents on record submitted by complainant are indeed mere photocopies. In fact, respondent has consistently objected to the admission in evidence of said documents on this ground.[5] We cannot, thus, find any compelling reason to set aside the investigating commissioner's findings on this point. It is well-settled that in disbarment proceedings, the burden of proof rests upon complainant. In *Martin v. Felix*,[6] we held:

Significantly, this Court has, time and again, declared a conservative and cautious approach to disbarment proceedings like the instant case. . . .

In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.

Thus, absent a showing of clear preponderant evidence to sustain the charge against respondent, the complaint must be dismissed.[7] In this case, complainant claims that respondent notarized 145 documents within the period July 31, 1989-October 31, 1989.[8] However, not one original copy was presented by him in evidence. Not even

one of the several parties involved therein came forward to testify if only to establish the authenticity of at least one of these documents.

The general rule is that photocopies of documents are inadmissible.[9] As held in *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals*,[10] such document has no probative value and is inadmissible in evidence.

We note that complainant twice filed criminal complaints (I.S. Nos. 90-107 and 94-147) for usurpation of official functions. In both cases the complaints were dismissed by the Office of the Provincial Prosecutor of Calamba, Laguna. As noted in his resolution dismissing one of the criminal complaints by the provincial prosecutor, "complainant failed to produce the original copy of the Deed of Absolute Sale allegedly notarized by the respondent Atty. Daniel Fandiño Jr., all in violation of a basic tenet of evidence, the Best Evidence Rule, whereby it is required, as a general rule, that the original writings must be alleged much less proved. The xerox copy of the alleged Deed of Absolute Sale is inadmissible in evidence, in the absence of evidence to prove that the original copies of the same were lost or destroyed or cannot be otherwise produce." [11]

We are not unmindful of the principle that disciplinary proceedings against lawyers are *sui generis*, in that they are neither civil or criminal actions but rather investigations by the Court into the conduct of its officers.[12] However, although these proceedings are not, in the strict sense, ordinary actions where trials are held and the rules of procedure apply, the rules on evidence cannot be shunted aside considering that the exercise of one's profession is at stake. This principle finds particular importance in cases where, as in the present one, complainant's motives in instituting the charges are not beyond suspicion.[13] We cannot, as complainant asks of us,[14] simply brush aside as "immaterial" respondent's allegation that the complaint was instituted as a form of harassment and blackmail, when complainant failed to sustain his claims despite lapse of reasonable time.

In truth, complainant has been unable to account for the source of documents in question. As the investigating commissioner noted in her report, this renders the authenticity of the documents even more doubtful, especially in view of respondent's contention that complainant could have falsified the signatures in the photocopied documents.

Second. Complainant's motions[15] to hold IBP Commissioner Benjamin Bernardino in contempt for "maliciously sitting on the case" should be denied. While it took the IBP seven (7) years to release its report/recommendation on the case, the time consumed to prepare his report cannot by itself be sufficient to impute malice on the part of Commissioner Bernardino. The case was assigned to four (4) IBP commissioners, namely, Attys. Daniel Macaraeg, Benjamin Bernardino, Commissioner Vivar, and Milagros V. San Juan. The transfer of the case was caused by retirement or resignation from office, and it was not at all a whimsical or deliberate move to delay complainant's case. In the absence of proof that it was malicious, we find no basis for holding that the reassignment of the case was made in bad faith much less in contempt of this Court.

WHEREFORE, complainant's motion for reconsideration of the resolution of the Integrated Bar of the Philippines dismissing his complaint against respondent Atty. Daniel P. Fandiño, Jr. and complainant's motion for contempt against IBP Commissioner Benjamin Bernardino are DENIED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Records, Vol. I, pp. 1-3.

[2] Id., pp. 17-19.

[3] Id., pp. 30-31.

[4] Comment/Opposition, pp. 4-5.

[5] See Comment, dated Sept. 16, 1991; Comments on the Offer of Evidence, dated Aug. 2, 1993.

[6] 163 SCRA 111, 130 (1988); *Arcadio v. Ylagan*, 143 SCRA 168 (1986).

[7] See *Gatchalian Promotions v. Naldoza*, A.C. No. 4017, Sept. 29, 1999.

[8] Comment/Opposition, p. 7.

[9] *Heirs of Severa P. Gregorio v. Court of Appeals*, 300 SCRA 565 (1998).

[10] 265 SCRA 733, 757 (1996).

[11] *Recors*, Vol. IV, p. 130.

[12] *Esquivias v. Court of Appeals*, 272 SCRA 803 (1997).

[13] See *Lim v. Atty. Antonio*, 148-B. Phil. 540 (1971).

[14] Comment/Opposition, p. 8.

[15] Dated September 23, 1997, June 4, 1998, October 6, 1998.

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