RODOLFO A. ESPINOSA AND MAXIMO A. GLINDO, COMPLAINANTS, VS. ATTY. JULIETA A. OMAÑA, RESPONDENT.

A.C. No. 9081. October 12, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a complaint for disbarment filed by Rodolfo A. Espinosa (Espinosa) and Maximo A. Glindo (Glindo) against Atty. Julieta A. Omaña (Omaña).

The Antecedent Facts

Complainants Espinosa and Glindo charged Omaña with violation of her oath as a lawyer, malpractice, and gross misconduct in office.

Complainants alleged that on 17 November 1997, Espinosa and his wife Elena Marantal (Marantal) sought Omaña's legal advice on whether they could legally live separately and dissolve their marriage solemnized on 23 July 1983. Omaña then prepared a document entitled "Kasunduan Ng Paghihiwalay" (contract) which reads:

> REPUBLIKA NG PILIPINAS
> BAYAN NG GUMACA
> LALAWIGAN NG QUEZON
>
> KASUNDUAN NG PAGHIHIWALAY
>
> KAMI, ELENA MARANTAL AT RODOLFO ESPINOSA, mga Filipino, may sapat na gulang, dating legal na mag-asawa, kasalukuyang naninirahan at may pahatirang sulat sa Brgy. Buensoceso, Gumaca, Quezon, at COMELEC, Intramuros, Manila ayon sa pagkakasunod-sunod, matapos makapanumpa ng naaayon sa batas ay nagpapatunay ng nagkasundo ng mga sumusunod:
>
> - Na nais na naming maghiwalay at magkanya-kanya ng aming mga buhay ng walang pakialaman, kung kaya't bawat isa sa amin ay maaari ng humanap ng makakasama sa buhay;
>
> - Na ang aming mga anak na sina Ariel John Espinosa, 14 na taong gulang; Aiza Espinosa, 11 taong gulang at Aldrin Espinosa, 10 taong gulang ay namili na kung kanino sasama sa aming dalawa. Si Ariel John at Aiza Espinosa ay sasama sa kanilang ama, Rodolfo Espinosa, at ang bunso, Aldrin Espinosa at sasama naman sa ina na si Elena;
>
> - Na dahil sina Ariel John at Aiza ay nagsisipag-aral sa kasalukuyan sila ay pansamantalang mananatili sa kanilang ina, habang tinatapos ang kanilang pag-aaral. Sa pasukan sila ay maaari ng isama ng ama, sa lugar kung saan siya ay naninirahan;
>
> - Na ang mga bata ay maaaring dalawin ng sino man sa aming dalawa tuwing may pagkakataon;
>
> - Na magbibigay ng buwanang gastusin o suporta ang ama kay Aldrin at ang kakulangan sa mga

pangangailangan nito ay pupunan ng ina;

- Na lahat ng mga kasangkapan sa bahay tulad ng T.V., gas stove, mga kagamitan sa kusina ay aking (Rodolfo) ipinagkakaloob kay Elena at hindi na ako interesado dito;

- Na lahat ng maaaring maipundar ng sino man sa amin dalawa sa mga panahong darating ay aming mga sari-sariling pag-aari na at hindi na pinagsamahan o conjugal.

BILANG PATUNAY ng lahat ng ito, nilagdaan namin ito ngayong ika-17 ng Nobyembre, 1997, dito sa Gumaca, Quezon.

(Sgd)

(Sgd)

ELENA MARANTAL

RODOLFO ESPINOSA

Nagkasundo

Nagkasundo

PINATUNAYAN AT PINANUMPAAN dito sa harap ko ngayong ika-17 ng Nobyembre, 1997, dito sa Gumaca, Quezon

ATTY. JULIETA A. OMAÑA

Notary Public

PTR No. 3728169; 1-10-97
Gumaca, Quezon

Doc. No. 482;
Page No. 97;
Book No. XI;
Series of 1997.

Complainants alleged that Marantal and Espinosa, fully convinced of the validity of the contract dissolving their marriage, started implementing its terms and conditions. However, Marantal eventually took custody of all their children and took possession of most of the property they acquired during their union.

Espinosa sought the advice of his fellow employee, complainant Glindo, a law graduate, who informed him that the contract executed by Omaña was not valid. Espinosa and Glindo then hired the services of a lawyer to file a complaint against Omaña before the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD).

Omaña alleged that she knows Glindo but she does not personally know Espinosa. She denied that she prepared the contract. She admitted that Espinosa went to see her and requested for the notarization of the contract but she told him that it was illegal. Omaña alleged that Espinosa returned the next day while she was out of the office and managed to persuade her part-time office staff to notarize the document. Her office staff forged her signature and notarized the contract. Omaña presented Marantal's "Sinumpaang Salaysay" (affidavit) to support her allegations and to show that the complaint was instigated by Glindo. Omaña further presented a letter of apology from her staff, Arlene Dela Peña, acknowledging that she notarized the document without Omaña's knowledge, consent, and authority.

Espinosa later submitted a "Karagdagang Salaysay" stating that Omaña arrived at his residence together with a

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girl whom he later recognized as the person who notarized the contract. He further stated that Omaña was not in her office when the contract was notarized.

The Decision of the Commission on Bar Discipline

In its Report and Recommendation[1] dated 6 February 2007, the IBP-CBD stated that Espinosa's desistance did not put an end to the proceedings. The IBP-CBD found that Omaña violated Rule 1.01, Canon 1 of the Code of Professional Responsibility which provides that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. The IBP-CBD stated that Omaña had failed to exercise due diligence in the performance of her function as a notary public and to comply with the requirements of the law. The IBP-CBD noted the inconsistencies in the defense of Omaña who first claimed that it was her part-time staff who notarized the contract but then later claimed that it was her former maid who notarized it. The IBP-CBD found:

> Respondent truly signed the questioned document, yet she still disclaimed its authorship, thereby revealing much more her propensity to lie and make deceit, which she is deserving [of] disciplinary sanction or disbarment.

The IBP-CBD recommended that Omaña be suspended for one year from the practice of law and for two years as a notary public.

In a Resolution dated 19 September 2007, the IBP Board of Governors adopted and approved the recommendation of the IBP-CBD.

Omaña filed a motion for reconsideration.

In a Resolution dated 26 June 2011, the IBP Board of Governors denied Omaña's motion for reconsideration.

The Issue

The sole issue in this case is whether Omaña violated the Canon of Professional Responsibility in the notarization of Marantal and Espinosa's "Kasunduan Ng Paghihiwalay."

The Ruling of this Court

We adopt the findings and recommendation of the IBP-CBD.

This case is not novel. This Court has ruled that the extrajudicial dissolution of the conjugal partnership without judicial approval is void.[2] The Court has also ruled that a notary public should not facilitate the disintegration of a marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership,[3] which is exactly what Omaña did in this case.

In Selanova v. Judge Mendoza,[4] the Court cited a number of cases where the lawyer was sanctioned for notarizing similar documents as the contract in this case, such as: notarizing a document between the spouses which permitted the husband to take a concubine and allowed the wife to live with another man, without opposition from each other;[5] ratifying a document entitled "Legal Separation" where the couple agreed to be separated from each other mutually and voluntarily, renouncing their rights and obligations, authorizing each other to remarry, and renouncing any action that they might have against each other;[6] preparing a document authorizing a married couple who had been separated for nine years to marry again, renouncing the right of action which each may have against the other;[7] and preparing a document declaring the conjugal partnership dissolved.[8]

We cannot accept Omaña's allegation that it was her part-time office staff who notarized the contract. We agree with the IBP-CBD that Omaña herself notarized the contract. Even if it were true that it was her part-time staff who notarized the contract, it only showed Omaña's negligence in doing her notarial duties. We reiterate that a

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notary public is personally responsible for the entries in his notarial register and he could not relieve himself of this responsibility by passing the blame on his secretaries[9] or any member of his staff.

We likewise agree with the IBP-CBD that in preparing and notarizing a void document, Omaña violated Rule 1.01, Canon 1 of the Code of Professional Responsibility which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Omaña knew fully well that the "Kasunduan Ng Paghihiwalay" has no legal effect and is against public policy. Therefore, Omaña may be suspended from office as an attorney for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.[10]

WHEREFORE, we SUSPEND Atty. Julieta A. Omaña from the practice of law for ONE YEAR. We REVOKE Atty. Omaña's notarial commission, if still existing, and SUSPEND her as a notary public for TWO YEARS. Let a copy of this Decision be attached to Atty. Omaña's personal record in the Office of the Bar Confidant. Let a copy of this Decision be also furnished to all chapters of the Integrated Bar of the Philippines and to all courts in the land.

SO ORDERED.

Brion, Sereno, Reyes, and Perlas-Bernabe,[*] JJ., concur.

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[*] Designated Acting Member per Special Order No. 1114 dated 3 October 2011.

[1] Signed by Atty. Salvador B. Hababag, Commissioner.

[2] Selanova v. Judge Mendoza, A.M. No. 804-CJ, 159-A Phil. 360 (1975).

[3] Albano v. Mun. Judge Gapusan, A.M. No. 1022-MJ, 162 Phil. 884 (1976).

[4] Supra, note 2.

[5] Panganiban v. Borromeo, 58 Phil. 367 (1933).

[6] Biton v. Momongan, 62 Phil. 7 (1935).

[7] In re: Atty. Roque Santiago, 70 Phil. 66 (1940).

[8] Balinon v. De Leon, 94 Phil. 277 (1954).

[9] Lingan v. Calubaquib and Baliga, 524 Phil. 60 (2006).

[10] Catu v. Rellosa, A.C. No. 5738, 19 February 2008, 546 SCRA 209.

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