

FELICIDAD VDA. DE BERNARDO, COMPLAINANT, VS. ATTY. JOSE R. RESTAURO, RESPONDENT.

Adm. Case No. 3849. June 25, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Complainant Felicidad Vda. de Bernardo (married to the late Alberto Bernardo) and Marcelino G. Soriano (married to Hildegarda Mejia) were co-owners of a parcel of land, with an area of 561 square meters, situated in Davao City, and covered by TCT No. T-39100.[1]

On June 8, 1992, complainant filed a petition for the disbarment or indefinite suspension of respondent Atty. Jose R. Restauro of Davao City for malpractice, deceit and grave misconduct.

Complainant averred that on July 19, 1990, respondent prepared and notarized a Special Power of Attorney[2] making it appear that she, Felicidad G. Soriano (complainant's full maiden name), her deceased spouse, Alberto Bernardo and Hildegarda Mejia appointed Marcelino G. Soriano, Jr. as their attorney-in-fact to sell a parcel of land situated in Davao City covered by TCT No. T-39100 when they neither appeared nor executed and acknowledged said document before respondent. The Special Power of Attorney was entered in the Notarial Register of respondent as Doc. No. 380, Page No. 76, Book No. XIX, Series of 1990.

Complainant further alleged that her husband, Alberto Bernardo, could not have appeared and executed said Special Power of Attorney before respondent on July 19, 1990 since her husband died on January 30, 1980 at the Pangasinan Medical Center, as evidenced by a death certificate.[3] Hence, when the Special Power of Attorney was executed, her husband was dead for more than ten years.

Complainant also alleged that to recover her share of the property which was sold to a third party, she hired the services of her counsel whom she promised to pay 25 percent (on a contingent basis) of the value of her share.

Complainant prayed that respondent be disbarred or indefinitely suspended, and that he be ordered to pay the value of her pro indiviso half share of said property, the attorney's fees and the costs of the suit.

In his Answer, respondent asserted that he would not have known the names of Felicidad Soriano, Alberto Bernardo and Hildegarda Mejia if said persons did not go to his office to request that he prepare the Special Power of Attorney. Moreover, he stated that he would not have notarized the document if they did not appear before him and acknowledge that it was their act and deed. He also mentioned that said persons brought with them the title (TCT No. T-39100) to the property.

Respondent further averred that a living Alberto Bernardo appeared before him in Davao City and signed the Special Power of Attorney at the time of its execution. He also stated that Pangasinan and Davao City are far apart; hence, events happening in either places (alluding to the death of complainant's husband, Alberto Bernardo) are not always known to everybody. Atty. Restauro prayed for the dismissal of the complaint.

On September 14, 1992, this case was referred by the Court to the Integrated Bar of the Philippines for investigation, report and recommendation.

The Investigating Commissioner set the case for hearing on November 16, 1993. During the hearing, only complainant and her counsel were present. Complainant testified and identified the documents mentioned in her Complaint. Thereafter, she submitted a Formal Offer of Evidence dated November 19, 1993.

On November 18, 1993, the Commissioner received from respondent a Manifestation dated November 9, 1993 stating that he could not attend the hearing set on November 16, 1993 due to previous commitments and that if the hearing could not be postponed to a later date, he was waiving his right to attend it.

In his Comments/Objections on Complainant's Formal Offer of Evidence, respondent stated that he acted in good faith when he prepared the Special Power of Attorney and that the persons involved were all present, otherwise, the execution of said document would not have been possible. He prayed for the non-admission of the evidence submitted by complainant.

As directed by the Commissioner, complainant filed a Memorandum. But respondent did not.

In her Memorandum, complainant stated that whoever appeared before respondent at the time of the execution of the Special Power of Attorney and claimed to be her, Felicidad G. Soriano, and her deceased husband, Alberto Bernardo, were impostors. According to complainant, respondent could have been in good faith when the supposed Alberto Bernardo went to his office for the first time for the preparation and notarization of the Special Power of Attorney. Nevertheless, after complainant, through her counsel, had informed respondent on May 6, 1992 (nearly 2 years after the execution of said Special Power of Attorney) that the persons who appeared before him were impostors, respondent was already in bad faith for not contacting said persons and for not retracting the unauthorized Special Power of Attorney.

In her report, the Investigating Commissioner found that it was not satisfactorily established that respondent was a party to the fraudulent execution of said Special Power of Attorney. Respondent's participation was only in the preparation and notarization of said document based on the parties' identification papers and their representations that they were the persons who they claimed to be. The notarial acknowledgment of said document showed that the alleged impostors presented their Community Tax Certificates bearing the names of complainant Felicidad G. Soriano and her deceased husband, Alberto Bernardo.

The Investigating Commissioner also stated, thus:

It is noteworthy to stress here that a notary public is duty bound to require the person executing a document to be personally present, to swear before him that he is that person and ask the latter if he has voluntarily and freely executed the same; also to require him to sign in his presence if it is an affidavit or any other sworn statement. But if it is a document with an acknowledgment, it is sufficient that the party thereto personally appears before the notary public and acknowledges that he was the one who executed such document. It is enough that the Notary Public requires the party to produce identification papers like his Community Tax Certificate, and I.D. The Notary Public is not obliged to go beyond the identification papers/documents presented and to investigate further to ascertain the real identity of the executing party. What suffices is for the Notary Public to determine if he has the required identification papers. If this were not the rule, no lawyer or any other person authorized to act as Notary Public would accept the job and perform its functions.

However, the foregoing rule does not disregard the nature of the corresponding responsibilities of a Notary Public. His office is [imbued] with public trust and public service. He is obliged to exercise due diligence in ascertaining the true identity of the person executing a document. In this particular case, the Notary Public should have exerted utmost efforts to determine the real identity of the persons executing the Special Power of

Attorney considering that it was a document which authorizes a certain Marcelino G. Soriano, Jr. to sell one half of the pro-indiviso share of the complainant over a parcel of land situated in Davao City.

On the basis of her investigation, the Commissioner recommended the following:

Based on the foregoing, it is respectfully recommended that respondent Atty. Restauero be penalized for his aforementioned acts and negligence and that the penalty of reprimand be meted out on him. It is further recommended that his Commission as Notary Public be revoked for an indefinite period until the time that he will be able to show to the Honorable Supreme Court that he again deserves to be allowed to act as Notary Public in his place.

Subsequently, the IBP Board of Governors adopted the following Resolution of August 3, 2002:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's failure to exercise utmost diligence in the performance [of] his functions as Notary Public and for his disregard without justifiable reason of the Orders of the Commission, Respondent is hereby REPRIMANDED with REVOCATION of his Commission as Notary Public for an indefinite period until the time that he will be able to demonstrate to the court that he again deserves to be allowed to act as Notary Public.

On January 13, 2003, this Court noted the aforesaid Resolution.

The principal function of a notary public is to authenticate documents.[4] When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence.[5] Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery.[6] A notarial document is by law entitled to full faith and credit upon its face.[7] Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed before a notary public and appended to a private instrument.[8] Hence, a notary public must discharge his powers and duties, which are impressed with public interest,[9] with accuracy and fidelity.

The Court agrees with the Integrated Bar of the Philippines that in this case, respondent, as notary public, should have exercised utmost diligence in ascertaining the true identity of the persons executing the said Special Power of Attorney considering that it authorized Marcelino G. Soriano, Jr. to sell the pro indiviso half share of complainant in the land covered by TCT No. T-39100.

However, the act of respondent does not warrant his disbarment or indefinite suspension. Considering all the circumstances in this case, particularly the absence of any evidence of fraud involved, this Court finds a suspension of six (6) months as notary public sufficient. Respondent, and for that matter, all notaries public, are hereby cautioned to be very careful and diligent in ascertaining the true identities of the parties executing a document before them, especially when it involves disposition of a property, as this Court will deal with such cases more severely in the future.

WHEREFORE, respondent Atty. Jose R. Restauero is hereby SUSPENDED as notary public for six (6) months for failure to exercise utmost diligence in the performance of his functions as notary public, and WARNED that a similar incident in the future shall be dealt with more severely.

No costs.

SO ORDERED.

Davide, Jr., (Chairman), C.J., Vitug, Ynares-Santiago, and Carpio, JJ., concur.

[1] Exh. "E," Records, Vol. I, p. 7.

[2] Exh. "B," Records, Vol. I, pp. 5-6.

[3] Exh. "C," Records, Vol. I, p. 9.

[4] Bernardo vda. de Rosales v. Ramos, Adm. Case No. 5645, July 2, 2002, citing Antillon v. Barcelon, 37 Phil. 148, 153 (1917).

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid., citing Joson v. Baltazar, Adm. Case No. 575, 194 SCRA 114, 119 (1991).

[9] Villarin v. Sabate, Jr., 325 SCRA 123, 128 (2000).

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