

EN BANC

[A.C. NO. 5426, April 04, 2007]

CHITA PANTOJA-MUMAR, COMPLAINANT, VS. ATTY. JANUARIO C. FLORES, RESPONDENT.

DECISION

CALLEJO, SR., J.:

The instant administrative case stemmed from the complaint filed by Chita Pantoja-Mumar charging respondent Atty. Januario C. Flores with fraud, misrepresentation, deceit, falsification of document, breach of duty and violation of his oath as a lawyer.

Complainant is one of the compulsory heirs of the late Jose Pantoja, Sr. It appears that respondent had prepared an Extrajudicial Partition with Absolute Sale^[1] for her and 11 other co-heirs covering a three-hectare property in Pangdan, Cambanay, Danao City. The deed was executed in favor of the spouses Filomena and Edilberto Perez, who were later able to secure a torrens title^[2] over the property under their names.

In the verified Complaint^[3] dated March 17, 2001, complainant alleged that respondent had prepared the Extrajudicial Partition with Absolute Sale dated December 29, 1987, but averred that the transaction did not push through, and the deed was not notarized. She further narrated, thus:

8. [Respondent], knowing fully well that there actually was no transaction between the Pantojas and the Perezes, notarized the same document apparently in violation of his oath as a lawyer and a breach of his duty as a notary public. Worst was the fact that [the] spouses Perez and the respondent had the document thumbmarked by [a person other than] Maximina Pantoja as appearing above in the same typewritten name. Attached is an enlarged Machine Copy of Maximina Pantoja's true and genuine thumbmark as Annex "C" while an enlarged machine copy of the thumbmark appearing above her typewritten name in the said document is attached as Annex "D" for comparison;
9. Moreover, the respondent x x x made it appear in the falsified/fabricated and forged document that the same was acknowledged before him on December 29, 1987, when in truth and in fact, he and [the] spouses Perez prepared, falsified, fabricated and forged the said document after June 13, 1988, when they were able to fraudulently secure the first page thereof from Lucrecia P. Awe, not to mention the fact that neither of the parties to the said document appeared before him as required under the notarial law. This is supported by the written declaration of [the] spouses Perez

dated June 25, 1988 that they bought the property on June 13, 1988 for P40,000.00, a photocopy of which is attached as Annex "E" hereof.

10. On the basis of such falsified, fabricated and forged document denominated as Extrajudicial Partition with Absolute Sale, [the] spouses Perez with the help of respondent attorney, were able to effect the issuance of a title over the above-described property in their names to the damage and prejudice of complainant and the compulsory heirs of the late Jose Pantoja, Sr. Attached as Annex "F" is a photocopy of the title;^[4]

Respondent denies the charges against him. His version of what transpired during the signing and notarization of the document is as follows:

9. x x x [D]uring the signing of the document at the ancestral home of the Pantojas on December 29, 1987, by surviving spouse Celedonia Lumen Pantoja and all the children (except Mrs. Mumar), the respondent called the attention of Mrs. Pantoja to the fact that Mrs. Mumar was not a signatory to the document because she was absent. Mrs. Pantoja pleaded with the respondent to proceed with the notarization of the document because she badly needed the money. She promised to have the document signed by Mrs. Mumar as soon as she would come to Danao City;
10. But Mrs. Pantoja did not make good her promise. So, on February 24, 1989, Edilberto Perez (vendee) sent a registered letter to Mrs. Chita P. Mumar at her address at Talibon, Bohol, informing her of the sale of their 3.3526 hectare property located in Pandan, Cambanay, Danao City, covered by Tax Dec. 008-0895, a copy of the letter is hereto attached as Annex "F." The letter was received by her son Odelio Mumar on March 2, 1989, per postal registry return card hereto attached as Annex "G";
11. Obviously, as early as March 2, 1989, complainant Mumar already knew of the Deed of Extrajudicial Partition with Sale. Therefore, her right of action, whether civil, criminal or administrative, is barred by prescription. She is also guilty of laches in failing to assert her right for an unreasonable length of time;
12. Lastly, the Deed of Extrajudicial Partition with Sale was published in the Sun Star Daily, a newspaper of general circulation in the cities and province of Cebu in its issues of March 18, 23 and 31, 1989, as shown by an Affidavit of Publication by its Editor-in-Chief Pacheco Seares, a copy of said affidavit is hereto attached as Annex "H."^[5]

He alleged that no criminal charges for falsification were filed against him, and it was only on January 11, 2000 that seven of the ten heirs of Jose Pantoja, Sr. filed a civil case for Recovery of Ownership, Annulment of Deed of Extrajudicial Settlement with Sale, Accounting and Damages.^[6]

The Court referred the matter to the Integrated Bar of the Philippines (IBP) on

November 26, 2001. The case was assigned to Commissioner Teresita J. Herbosa. A mandatory conference was held on October 15, 2003, where only the complainant appeared and manifested that she was willing to submit the case for decision on the basis of the pleadings submitted. She requested for additional time to file a verified position paper.

For his part, respondent filed a Manifestation that he received the notice of mandatory conference, but requested to be excused therefrom. He stated that he was also willing to submit the case on the basis of the pleadings.

In her Position Paper, complainant reiterated the allegations in her complaint. She insisted that respondent forged her signature, which originally did not appear on the first page of the document before it was borrowed. She added that respondent had also falsified a Special Power of Attorney (SPA) to make it appear that one of her co-heirs had authorized another to sign the deed for her. According to the complainant, respondent dated the questioned document "December 29, 1987," when in fact the first page containing all the signatures of the heirs was borrowed only on June 13, 1988. Even the spouses Perez declared in writing that they had bought the subject property on June 13, 1988. The complainant stressed that the spouses Perez were able to secure a certificate of title to the subject property because of the forged document.

In his Comment on the Position Paper, respondent alleged that the allegations in the complaint are self-serving and not supported by evidence. To prove his point, respondent enclosed the original duplicate of the SPA which was notarized on November 4, 1987, and the transcript of stenographic notes in Civil Case No. DNA-574, particularly the testimony of Clarita Manulat, who testified on the circumstances surrounding the execution of the SPA and handcarried it to Pasig on June 20, 1987.

Regarding Maximina's thumbmark, respondent recalled that on December 29, 1987, he, Clarita Manulat, and vendee Filomena Perez went to the residence of Celedonia Pantoja as previously agreed upon. Only the complainant was not present. After the other heirs finished signing the document, Mrs. Pantoja asked permission from respondent if she could bring the document inside the bedroom because she would be coaxing her daughter to affix her thumbmark. Mrs. Pantoja told them that Maximina was "reclusive and suffering from mental imbalance."

According to respondent, the so-called thumbmark of Maximina which appears on the *cedula* is the fake one. He surmised that this thumbmark was probably affixed on the *cedula* by one of her sisters, since Maximina would not come out of her room and had to be coaxed by her mother to affix her thumbmark on the document. Respondent also enclosed a copy of the transcript of his testimony in Civil Case No. DNA-574.

In reply, complainant pointed out that respondent had admitted that he did not see Maximina affix her thumbmark on the assailed Deed, yet he notarized it; respondent had also admitted that he had committed a breach of his office as a notary public on cross-examination in Civil Case No DNA-574. Respondent's belief that Maximina Pantoja was suffering from some mental ailment and yet still notarized it only proves his misconduct.