

FIRST DIVISION

[A.C. No. 8450, July 26, 2017]

**SPOUSES FELIX AND FE NAVARRO, COMPLAINANTS, VS. ATTY.
MARGARITO G. YGOÑA, RESPONDENT.**

RESOLUTION

CAGUIOA, J:

A notarized document is entitled to full faith and credit upon its face. A notary public must exercise utmost care in performing his duties to preserve the public's confidence in the integrity of notarized documents.^[1]

The relevant facts, as borne by the records, are as follows:

Complainants spouses Felix and Fe Navarro (Spouses Navarro) were the owners of a parcel of land (subject property) located at Barrio Panadtaran, San Fernando, Cebu, Philippines, covered by Tax Declaration No. 0137-7148.^[2]

Sometime in November 2002, the Spouses Navarro obtained a loan from Mercy Grauel (Grauel) in the amount of P300,000.00.^[3] As a collateral for the loan, the Spouses Navarro executed and signed a Promissory Note and a Real Estate Mortgage over the subject property on November 22, 2002.^[4] In addition, Grauel proposed to the Spouses Navarro the execution of a Deed of Absolute Sale conveying the subject property to Grauel, in the event that the Spouses Navarro would fail to pay the loan.^[5] Grauel admitted that she made the proposal to avoid the tedious process of foreclosing a property, and that the Deed of Absolute Sale would serve merely as an additional security for the loan.^[6] According to Grauel, the Spouses Navarro agreed to her proposal and voluntarily signed the Deed of Absolute Sale.^[7]

Grauel repeatedly demanded payment from the Spouses Navarro, but her demands went unheeded.^[8] Grauel recounted that due to her hectic schedule, she forgot to register the Real Estate Mortgage with the Office of the Register of Deeds. It was only on March 2004 when Grauel filed her request and paid the corresponding fees for the registration of the Real Estate Mortgage. Despite this, the Real Estate Mortgage was not registered because the Office of the Register of Deeds allegedly just sat on Grauel's request.^[9]

Upon instructions made by Grauel, Atty. Ygoña sent the Spouses Navarro a letter, received on September 24, 2004, demanding payment of the loan.^[10] According to Grauel, since the Spouses Navarro could no longer pay, Grauel proposed that the Spouses Navarro convey to her the subject property to extinguish all their obligations arising from the loan.^[11] Thereafter, on October 22, 2004, Atty. Ygoña

notarized the Deed of Absolute Sale which Grauel used to cause the transfer of the tax declaration over the subject property to her name.^[12]

Upon learning that Grauel filed a civil case for Quieting of Title, the Spouses Navarro filed an adverse claim in order to restore their right over the subject property.^[13] The Spouses Navarro also filed a criminal complaint against Grauel and Atty. Ygoña for Estafa through Falsification of Public Document, and the instant administrative case against Atty. Ygoña.^[14] The Spouses Navarro asserted that, driven by their dire need for the proceeds of the loan and lacking familiarity with the particulars of the transaction, they hastily signed the Deed of Absolute Sale, of which the date and other relevant portions were allegedly left blank.^[15]

According to the Spouses Navarro, and as admitted by Grauel, the Promissory Note, the Real Estate Mortgage, and the Deed of Absolute Sale were all executed on November 22, 2002.^[16] The Real Estate Mortgage was notarized by Atty. Ygoña on the same date. However, the Deed of Sale was notarized only on October 22, 2004.^[17]

In their complaint,^[18] the Spouses Navarro alleged that the Deed of Absolute Sale was fictitious and that their signatures therein were forged. In impugning the validity of the Deed of Absolute Sale, the Spouses Navarro pointed out several irregularities, particularly, the Community Tax Certificates (CTC) used in the Deed of Absolute Sale and the Acknowledgment portion.^[19] In addition, the Spouses Navarro presented a Certification^[20] issued by the Office of the Clerk of Court (Notarial Section), Regional Trial Court of Cebu, 7th Judicial Region, confirming that Atty. Ygoña had submitted his notarial report for the year 2004, but the subject Deed of Absolute Sale notarized on October 22, 2004 was not among the documents listed.

For his part, Atty. Ygoña averred that at the time the Deed of Absolute Sale was presented to him for notarization, it was complete in all material particulars, and that the Spouses Navarro freely and voluntarily executed and signed the same.^[21] Atty. Ygoña also emphasized that the Spouses Navarro did not deny the genuineness of their signatures in the Deed of Absolute Sale.^[22]

In a Resolution^[23] dated September 19, 2005, the City Prosecutor dismissed the criminal complaint for Estafa against Atty. Ygoña as there was no proof that he conspired with Grauel in committing the crime against the Spouses Navarro. However, in the same Resolution, the City Prosecutor recommended the filing of an Information for Estafa under Article 315, No. 3(a) of the Revised Penal Code (RPC) against Grauel after finding probable cause that she employed deceit and fraud when she induced the Spouses Navarro to sign the Deed of Absolute Sale purposely as an assurance before granting the loan, but used it to transfer the title over the property to her name, to the prejudice of the Spouses Navarro.^[24]

At the scheduled mandatory conference on August 13, 2010, the Spouses Navarro and Atty. Ygoña were present, and assisted by their respective counsels, jointly moved for the resetting of the case to give them enough time to go over the records.^[25]

During the last mandatory conference on November 19, 2010, the Spouses Navarro, represented by Atty. Rainier C. Lacap, and Atty. Ygoña agreed that stipulations, admissions, and issues shall be limited to the pleadings already filed.^[26] The mandatory conference was terminated and the parties submitted their respective position papers. Thereafter, the case was deemed submitted for decision.

After due proceedings, Commissioner Mario V. Andres (Commissioner Andres) rendered a Report and Recommendation^[27] on June 10, 2013, concluding that Atty. Ygoña failed to diligently perform his notarial functions after notarizing the Deed of Absolute Sale, when he should have already been aware of a possible badge of *pactum commissorium* in the transaction - that the lender, Grauel, intended an automatic appropriation of the subject property in case of nonpayment of the loan by the Spouses Navarro.^[28] The dispositive portion reads:

WHEREFORE, the Undersigned respectfully recommends that if the notarial commission of the Respondent still exists, that it be hereby revoked and that he be disqualified from being commissioned as a notary public for two (2) years. It is also recommended that herein Respondent be suspended from the practice of law for three (3) to six (6) months.^[29]

In its Resolution^[30] dated August 9, 2014, the IBP Board of Governors resolved to adopt and approve the said Report and Recommendation, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by evidence on record and the applicable laws, and for failure to exercise the utmost diligence in the performance of his functions as a notary public, Atty. Margarita G. Ygoña's Notarial Commission is hereby **Immediately Revoked. Atty. Margarito G. Ygoña is further DISQUALIFIED from being commissioned as notary public for two (2) years and SUSPENDED from the practice of law for three (3) months.**^[31]

On February 25, 2016, the IBP Board of Governors denied Atty. Ygoña's Motion for Reconsideration finding no reason to reverse its previous decision.^[32] On August 26, 2016, the IBP Board of Governors denied Atty. Ygoña's Second Motion for Reconsideration for the following reasons: (1) neither the Rules of Court nor the IBP Commission on Bar Discipline Rules allow the filing of the same; (2) for being dilatory; and (3) the issues therein had already been passed upon.^[33]

After a judicious examination of the records and submission of the parties, this Court affirms the resolution of the IBP Board of Governors finding respondent Atty. Ygoña administratively liable, but modifies the penalty imposed.

The Court does not entirely agree with the basis of Commissioner Andres in finding Atty. Ygoña liable for his failure to diligently perform his notarial functions. Commissioner Andres concluded that Atty. Ygoña should have been aware that the Deed of Absolute Sale he had notarized was in the nature of a *pactum*