

## EN BANC

**[ A.C. No. 10859 [Formerly CBD Case No. 09-2514], January 26, 2016 ]**

**MARIA FATIMA JAPITANA, COMPLAINANT, VS. ATTY. SYLVESTER C. PARADO, RESPONDENT.**

### D E C I S I O N

#### PER CURIAM:

This refers to the September 27, 2014 Resolution<sup>[1]</sup> of the Integrated Bar of the Philippines-Board of Governors (*IBP-BOG*), which adopted and approved with modification, the Report and Recommendation<sup>[2]</sup> of the Investigating Commissioner.

In her verified complaint,<sup>[3]</sup> dated April 6, 2009, which was indorsed by the Court to the IBP, complainant Maria Fatima Japitana (*Fatima*) accused respondent Atty. Sylvester C. Parado (*Atty. Parado*) of performing notarial acts without authority to do so, knowingly notarizing forged documents, and notarizing documents without requiring sufficient identification from the signatories.

#### *The Complaint*

On June 22, 2006, Atty. Parado notarized the Real Estate Mortgage<sup>[4]</sup> between RC Lending Investors, Inc. (*RC Lending*), as mortgagee, and Maria Theresa G. Japitana (*Theresa*) and Ma. Nette Japitana (*Nette*), as mortgagors. It was supposedly witnessed by Maria Sallie Japitana (*Sallie*) and Maria Lourdes Japitana-Sibi (*Lourdes*) and her husband Dante Sibi (*Dante*), Fatima's sisters and brother-in-law, respectively. The mortgage covered a parcel of land on which the family home of the Japitanas was constituted. On the same date, Atty. Parado notarized the Affidavit<sup>[5]</sup> allegedly executed by Theresa, Nette, Lourdes, Dante, and Sallie to show their conformity to the Real Estate Mortgage over the land where their family home was situated.

On October 23, 2006, RC Lending, through Cristeta G. Cuenco (*Cuenco*), filed its Petition for ExtraJudicial Foreclosure of Real Estate Mortgage.<sup>[6]</sup> Consequently, the Transfer Certificate of Title (*TCT*) was issued under the name of RC Lending. On February 3, 2009, it filed an *ex-parte* motion<sup>[7]</sup> for the issuance of a break-open order, for RC Lending to effectively take the possession of the subject property as it was gated and nobody would answer in spite of the sheriffs repeated knocking.

Fatima, however, assailed that the signatures in the Real Estate Mortgage as well as in the Affidavit, both notarized on June 22, 2006, were forgeries. She asserted that Atty. Parado did not require the persons who appeared before him to present any valid identification. Fatima alleged that Atty. Parado manually forged the signatures of Sallie, Lourdes and Dante, as witnesses to the Real Estate Mortgage. She added

that her sister, Theresa, was a schizophrenic since 1975. More importantly, Fatima averred that Atty. Parado had no notarial authority, as certified<sup>[8]</sup> by the Clerk of Court of the Regional Trial Court of Cebu (RTC).

#### *Proceedings before the IBP*

The IBP Commission on Bar Discipline (CBD) issued the order,<sup>[9]</sup> dated September 17, 2009, directing Atty. Parado to submit his answer to the verified complaint within fifteen (15) days from receipt of the said order. On February 17, 2011, the IBP CBD issued the Notice of Mandatory Conference,<sup>[10]</sup> requiring both parties to attend the mandatory conference set on March 16, 2011. On the said date, The IBP CBD issued another order,<sup>[11]</sup> resetting the mandatory conference to April 6, 2011 because Atty. Parado failed to appear before the commission.

On April 6, 2011, Atty. Parado again failed to appear. The IBP CBD then issued the order<sup>[12]</sup> terminating the mandatory conference and directing both parties to submit their respective position papers within ten (10) days from receipt of the order.

In her position paper,<sup>[13]</sup> Fatima reiterated that Atty. Parado was guilty of unethical conduct for performing notarial acts without the necessary authority, and that he knowingly notarized forged documents. Atty. Parado, on the other hand, failed to submit his position paper.

#### *Report and Recommendation*

In his October 31, 2011 Report and Recommendation,<sup>[14]</sup> Investigating Commissioner Oliver A. Cachapero (Commissioner Cachapero) noted that Atty. Parado had previously testified in court that the mortgagors and the witnesses personally appeared before him and that it was he who required them to affix their thumb marks and their signatures - which the parties and the witnesses in the Real Estate Mortgage did. Commissioner Cachapero opined that there was no evidence to support that Atty. Parado lied as the court had not set aside his testimonies. Consequently, he concluded that it was not proven that Atty. Parado forged the assailed documents and notarized the same.

Commissioner Cachapero, however, found that Atty. Parado was dishonest when he testified that he was issued a notarial commission effective until 2008. His claim was belied by the certification issued by the Clerk of Court of the RTC stating that Atty. Parado had not been issued a notarial commission for 2006. As such, he recommended that Atty. Parado be suspended from the practice of law for one (1) year.

On September 27, 2014, the IBP-BOG resolved to revoke Atty. Parado's notarial commission, if presently commissioned, for testifying that he had a notarial commission valid until 2008, contrary to the certification issued by the Clerk of Court of the RTC and for ignoring the notices sent by the Commission on Bar Discipline. Likewise, the Board of Governors disqualified Atty. Parado from being commissioned as a notary public for two (2) years and suspended him from the practice of law for six (6) months. Specifically, Resolution No. XXI-2014-616, reads:

xxx for testifying in Court that Respondent himself was issued notarial commission up to the year 2008 which was belied by the Certificate of the Clerk of Court VII of Cebu City pointing out that Respondent was not issued a Notarial Commission for the year 2006, and for ignoring the notices of the Commission, Atty. Sylvester C. Parado's notarial commission if presently commissioned is immediately **REVOKED**.

FURTHER, he is **DISQUALIFIED** from being Commissioned as Notary Public for two (2) years and **SUSPENDED** from the practice of law for six (6) months.<sup>[15]</sup>

### **The Court's Ruling**

The Court agrees with the IBP BOG but modifies the penalty imposed.

A close perusal of the records reveals that Atty. Parado had no existing notarial commission when he notarized the documents in question in 2006. This is supported by the certification issued by the Clerk of Court of the RTC stating that based on the Notarial Records, Atty. Parado had not been issued a notarial commission for the year 2006. He failed to refute the same as he neither appeared during the mandatory conference nor filed his position paper.

Under the 2004 Rules on Notarial Practice,<sup>[16]</sup> a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform notarial or the written evidence of authority.<sup>[17]</sup>

Without a commission, a lawyer is unauthorized to perform any of the notarial acts. A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities. In *Re: Violation of Rules on Notarial Practice*,<sup>[18]</sup> the Court emphasized that notaries public must uphold the requirements in acting as such, to wit:

**Under the rule, only persons who are commissioned as notary public may perform notarial acts within the territorial jurisdiction of the court which granted the commission.** Clearly, Atty. Siapno could not perform notarial functions in Lingayen, Natividad and Dagupan City of the Province of Pangasinan since he was not commissioned in the said places to perform such act.

Time and again, this Court has stressed that notarization is not an empty, meaningless and routine act. It is invested with substantive public interest that only those who are qualified or authorized may act as notaries public. It must be emphasized that the act of notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. **A notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must**