

## FIRST DIVISION

[ A.C. No. 4545, February 05, 2014 ]

**CARLITO ANG, COMPLAINANT, VS. ATTY. JAMES JOSEPH  
GUPANA, RESPONDENT.**

### DECISION

**VILLARAMA, JR., J.:**

Before us is a petition for review under Rule 139-B, Section 12(c) of the Rules of Court assailing Resolution Nos. XVII-2005-141<sup>[1]</sup> and XVIII-2008-698<sup>[2]</sup> of the Board of Governors of the Integrated Bar of the Philippines (IBP). The IBP Board of Governors found respondent Atty. James Joseph Gupana administratively liable and imposed on him the penalty of suspension for one year from the practice of law and the revocation of his notarial commission and disqualification from reappointment as notary public for two years.

The case stemmed from an affidavit-complaint<sup>[3]</sup> filed by complainant Carlito Ang against respondent. Ang alleged that on May 31, 1991, he and the other heirs of the late Candelaria Magpayo, namely Purificacion Diamante and William Magpayo, executed an Extra-judicial Declaration of Heirs and Partition<sup>[4]</sup> involving Lot No. 2066-B-2-B which had an area of 6,258 square meters and was covered by Transfer Certificate of Title (TCT ) No. (T-22409)-6433. He was given his share of 2,003 square meters designated as Lot No. 2066-B-2-B-4, together with all the improvements thereon.<sup>[5]</sup> However, when he tried to secure a TCT in his name, he found out that said TCT No. (T-22409)-6433 had already been cancelled and in lieu thereof, new TCTs<sup>[6]</sup> had been issued in the names of William Magpayo, Antonio Diamante, Patricia Diamante, Lolita D. Canque, Gregorio Diamante, Jr. and Fe D. Montero.

Ang alleged that there is reasonable ground to believe that respondent had a direct participation in the commission of forgeries and falsifications because he was the one who prepared and notarized the Affidavit of Loss<sup>[7]</sup> and Deed of Absolute Sale<sup>[8]</sup> that led to the transfer and issuance of the new TCTs. Ang pointed out that the Deed of Absolute Sale which was allegedly executed by Candelaria Magpayo on April 17, 1989, was antedated and Candelaria Magpayo's signature was forged as clearly shown by the Certification<sup>[9]</sup> issued by the Office of the Clerk of Court of the Regional Trial Court (RTC) of Cebu. Further, the certified true copy of page 37, Book No. XII, Series of 1989 of respondent's Notarial Report indubitably showed that Doc. No. 181 did not refer to the Deed of Absolute Sale, but to an affidavit.<sup>[10]</sup> As to the Affidavit of Loss, which was allegedly executed by the late Candelaria Magpayo on April 29, 1994, it could not have been executed by her as she died<sup>[11]</sup> three years prior to the execution of the said affidavit of loss.

Ang further alleged that on September 22, 1995, respondent made himself the attorney-in-fact of William Magpayo, Antonio Diamante, Patricia Diamante, Lolita Canque, Gregorio Diamante, Jr. and Fe D. Montero, and pursuant to the Special Power of Attorney in his favor, executed a Deed of Sale<sup>[12]</sup> selling Lot No. 2066-B-2-B-4 to Lim Kim So Mercantile Co. on October 10, 1995. Ang complained that the sale was made even though a civil case involving the said parcel of land was pending before the RTC of Mandaue City, Cebu.<sup>[13]</sup>

In his Comment,<sup>[14]</sup> respondent denied any wrongdoing and argued that Ang is merely using the present administrative complaint as a tool to force the defendants in a pending civil case and their counsel, herein respondent, to accede to his wishes. Respondent averred that Ang had filed Civil Case No. Man-2202 before Branch 55 of the Mandaue City RTC. He anchored his claim on the Extra-judicial Declaration of Heirs and Partition and sought to annul the deed of sale and prayed for reconveyance of the subject parcel of land. During the pre-trial conference in Civil Case No. Man-2202, Ang admitted that he is not an heir of the late Candelaria Magpayo but insisted on his claim for a share of the lot because he is allegedly the son of the late Isaias Ang, the common-law husband of Candelaria Magpayo. Because of his admission, the notice of *lis pendens* annotated in the four certificates of title of the land in question were ordered cancelled and the land effectively became available for disposition. Ang sought reconsideration of the order, but a compromise was reached that only one TCT (TCT No. 34266) will be annotated with a notice of *lis pendens*. Respondent surmised that these developments in Civil Case No. Man-2202 meant that Ang would lose his case so Ang resorted to the filing of the present administrative complaint. Thus, respondent prayed for the dismissal of the case for being devoid of any factual or legal basis, or in the alternative, holding resolution of the instant case in abeyance pending resolution of Civil Case No. Man-2202 allegedly because the issues in the present administrative case are similar to the issues or subject matters involved in said civil case.

Investigating Commissioner Lydia A. Navarro of the IBP Commission on Bar Discipline, to whom the case was referred for investigation, report and recommendation, submitted her Report and Recommendation<sup>[15]</sup> finding respondent administratively liable. She recommended that respondent be suspended from the practice of law for three months. She held that respondent committed an unethical act when he allowed himself to be an instrument in the disposal of the subject property through a deed of sale executed between him as attorney-in-fact of his client and Lim Kim So Mercantile Co. despite his knowledge that said property is the subject of a pending litigation before the RTC of Mandaue City, Cebu. The Investigating Commissioner additionally found that respondent "delegated the notarial functions to the clerical staff of their office before being brought to him for his signature." This, according to the commissioner, "must have been the reason for the forged signatures of the parties in the questioned document...as well as the erroneous entry in his notarial register..."<sup>[16]</sup> Nonetheless, the Investigating Commissioner merely reminded respondent to be more cautious in the performance of his duties as regards his infraction of his notarial duties. She held,

Respondent should have been more cautious in his duty as notary public which requires that the party subscribing to the authenticity of the document should personally appear and sign the same before respondent's actual presence. As such notary public respondent should

not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in accordance with Rule 9.01<sup>[17]</sup> of the Code of Professional Responsibility.<sup>[18]</sup>

On November 12, 2005, the Board of Governors of the IBP issued Resolution No. XVII-2005-141,<sup>[19]</sup> adopting the findings of the Investigating Commissioner but modifying the recommended penalty. Instead of suspension for three months, the Board recommended the penalty of suspension from the practice of law for one year and revocation of respondent's notarial commission and disqualification from reappointment as notary public for two years.

Respondent filed a motion for reconsideration,<sup>[20]</sup> arguing that it was neither illegal nor unethical for a lawyer to accept appointment as attorney-in-fact of a client to sell a property involved in a pending litigation and to act as such. He further contended that granting that his act was unethical, the modified penalty was evidently too harsh and extremely excessive considering that the act complained of was not unlawful and done without malice.

On December 11, 2008, the IBP Board of Governors adopted Resolution No. XVIII-2008-698<sup>[21]</sup> denying respondent's motion for reconsideration and affirming Resolution No. XVII-2005-141. Hence, this petition for review.

Respondent reiterates that being commissioned by his own clients to sell a portion of a parcel of land, part of which is involved in litigation, is not per se illegal or unethical. According to him, his clients got his help to sell part of the land and because they were residing in different provinces, they executed a Special Power of Attorney in his favor.<sup>[22]</sup>

We affirm the resolution of the IBP Board of Governors finding respondent administratively liable.

After reviewing the records of the case, the Court finds that respondent did not act unethically when he sold the property in dispute as the sellers' attorney-in-fact because there was no more notice of *lis pendens* annotated on the particular lot sold. Likewise, the Court finds no sufficient evidence to show that the Deed of Absolute Sale executed by Candelaria Magpayo on April 17, 1989 was antedated.

However, the Court finds respondent administratively liable for violation of his notarial duties when he failed to require the personal presence of Candelaria Magpayo when he notarized the Affidavit of Loss which Candelaria allegedly executed on April 29, 1994. Section 1 of Public Act No. 2103, otherwise known as the Notarial Law, explicitly provides:

Sec. 1. x x x

(a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same