

## SECOND DIVISION

[ A.C. No. 5436, May 27, 2004 ]

**ALFREDO BON, COMPLAINANT, VS. ATTYS. VICTOR S. ZIGA AND ANTONIO A. ARCANGEL, RESPONDENTS.**

### DECISION

**TINGA, J.:**

On May 9, 2001, Alfredo Bon (complainant) filed a *Complaint*<sup>[1]</sup> dated April 3, 2001 for disbarment against the respondents, Attys. Victor S. Ziga (Ziga) and Antonio A. Arcangel (Arcangel). Allegedly, the respondents, conspiring with each other and with the use of fraud, intimidation, stealth, deception and monetary consideration, caused Amalia Bon-Padre Borjal, Teresa Bon-Padre Patenio, Felecito Bon and Angelina Bon (collectively, the Bons) to sign a document entitled *Waiver and Quitclaim*. According to the complainant, the Bons signed the *Waiver and Quitclaim* because of Ziga's representation that the document was merely a withdrawal of a previously executed Special Power of Attorney. As it turned out, the document was a waiver in favor of Ziga of all the properties which the Bons inherited from their parents and predecessors-in-interest. Attached to the *Complaint* are *Affidavits*<sup>[2]</sup> executed by the Bons renouncing the *Waiver and Quitclaim*.

Moreover, the complainant claims that the Bons are residents of Manila and did not appear before Arcangel who was then in Albay to acknowledge the *Waiver and Quitclaim*. Despite this fact, Arcangel notarized the document and even made it appear that the Bons personally appeared before him to acknowledge the same.

On November 20, 2001, the respondents filed their *Joint Comment*<sup>[3]</sup> dated October 6, 2001. According to them, the allegations in the *Complaint* that the Bons did not understand the contents of the *Waiver and Quitclaim* and that they did not personally appear to acknowledge the same before Arcangel indicate that the cause of action is based on alleged intrinsic defects in the document. As such, only the parties to the document, *i.e.*, the Bons, whose rights were violated can file the *Complaint*. Being a stranger to the allegedly defective document, the complainant cannot file the *Complaint*. Besides, Maria Bon Borjal and Rafael Bon-Canafe who are co-signatories to the *Waiver and Quitclaim* both declared in their *Joint Affidavit*<sup>[4]</sup> that Ziga thoroughly explained the contents of the *Waiver and Quitclaim* to the Bons before they signed the document. The subscribing witnesses, Rogelio Bon-Borjal and Nida Barrameda, also declared in their *Joint Affidavit*<sup>[5]</sup> that the contents of the document were explained to the signatories.

The respondents also aver that it is difficult to believe that the Bons did not understand the contents of the document they were signing since Amalia and Angelina Bon are both high school graduates, while Teresa Bon is a college graduate.<sup>[6]</sup> Further, the fact that the Bons admit having accepted P5,000.00 from

Ziga to sign the *Waiver and Quitclaim* precludes them from questioning the document.

For Arcangel's part, he explains that assuming that he notarized the *Waiver and Quitclaim* in the absence of the signatories, his act is merely a violation of the Notarial Law but not a ground for disbarment. He further avers that he was able to talk to Maria Bon and Rafael Bon-Canafe, both co-signatories to the document, over the phone. Maria Bon and Rafael Bon-Canafe allegedly declared that they signed the *Waiver and Quitclaim*. The two, in fact, personally delivered the document for notarization in his office. Thus, he posits that there was substantial compliance with the Notarial Law since a notary public's primordial undertaking is merely to ensure that the signatures on a document are genuine. As long as they are so, the notary public can allegedly take the risk of notarizing the document although the signatories are not present.

In conclusion, the respondents aver that the complainant must first prove that the *Waiver and Quitclaim* is defective before he can file an administrative case against them.

The complainant filed a *Reply, Opposition and Comment to Joint Comment of Respondents* <sup>[7]</sup> dated April 5, 2001 asserting that he has a right to complain over the acquisition of the properties subject of the *Waiver and Quitclaim* having been mentioned therein. He also avers that he has the right to inform the Court of the deception committed by the respondents. He further states that the Bons signed the document after having been deceived and intimidated by Ziga who, he claims, exercises moral ascendancy over the Bons. That the Bons are educated does not necessarily mean they could not have been intimidated and deceived. He maintains that the Bons were misled into believing that what they were signing was a withdrawal of a previously issued Special Power of Attorney and were given P5,000.00 each to induce them to sign the *Waiver and Quitclaim*.

Even assuming that the signatures appearing on the *Waiver and Quitclaim* are genuine, he asserts that it was still highly irregular for Arcangel to notarize the document by telephone when it could have been notarized in Manila where the signatories reside. Lastly, he avers that it is not necessary for a court to declare that the *Waiver and Quitclaim* is defective before the instant administrative case can proceed.

The respondents filed their *Comment on Complainant's Reply* <sup>[8]</sup> dated April 12, 2002 alleging that in his reply, the complainant changed his cause of action from fraud and deception to intimidation and moral ascendancy. According to them, the complainant is incompetent to charge Ziga with intimidation as he was not a party to the document and was not even present when it was executed. The respondents insist that the only instance when anyone can file a disbarment complaint against a lawyer is when the ground therefore is a public offense like immorality, misbehavior, betrayal of trust and the like. When, as in the instant case, the parties to the alleged defective document have not formally impugned the document themselves, no one else can.

In the Court's *Resolution* <sup>[9]</sup> dated July 22, 2002, we referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and

recommendation. Citing the *Report and Recommendation*<sup>[10]</sup> dated November 7, 2002 of its Investigating Commissioner, the IBP passed *Resolution No. XV-2002-604*<sup>[11]</sup> on December 14, 2002 dismissing the *Complaint* for lack of merit. According to the *Report and Recommendation*, the Bons' failure to file the appropriate action to set aside the *Waiver and Quitclaim* casts doubt on their claim that Ziga misled or deceived them into signing the document. As regards Arcangel, the IBP concluded that while he may have been remiss in his duties as a notary public, the same does not constitute a ground for disbarment.

The complainant filed a *Motion for Reconsideration*<sup>[12]</sup> dated February 24, 2003 which the IBP denied in *Resolution No. XV-2003-149*<sup>[13]</sup> issued on March 22, 2003 since it no longer has jurisdiction to consider and resolve a matter already endorsed to the Supreme Court. The complainant then filed with this Court a *Motion for Re-Examination of the Report and Recommendation of the Investigating Commissioner of the Integrated Bar of the Philippines*<sup>[14]</sup> dated September 10, 2003 mainly rehashing his claim that the respondents induced the Bons to sign the *Waiver and Quitclaim* by means of deceit and abuse of moral ascendancy.

We are hard put to ascribe to Ziga the fraud, intimidation, stealth and deception with which the complainant labels his actuations. The fact that Amalia and Angelina Bon are both high school graduates, while Teresa Bon is a college graduate<sup>[15]</sup> makes it difficult to believe that they were deceived into thinking that the contents of the *Waiver and Quitclaim* were other than what they themselves could have easily ascertained from a reading of the document. As held by the Court in *Bernardo v. Court of Appeals*:<sup>[16]</sup>

...The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them. If a person cannot read the instrument, it is as much his duty to procure some reliable persons to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so and his failure to obtain a reading and explanation of it is such gross negligence as will estop him from avoiding it on the ground that he was ignorant of its contents...<sup>[17]</sup>

Besides, the *Waiver and Quitclaim* is plainly worded. It does not contain complicated terms that might be misconstrued by anyone who has half the education attained by Amalia, Angelina and Teresa Bon. Moreover, the Bons admitted therein that in 1930, their predecessors sold to the Ziga family the properties to which they now lay claim. They also declared in the document that it was only their brother, Alfredo, the complainant in this case, who still claimed rights over the properties. The relevant provisions of the *Waiver and Quitclaim* state:

- ...1. We are heirs and direct descendants of the late Santiago Bon of Tabaco, Albay;
2. We had been named as formal parties in DARAB Case No. V-RC-010, Albay Branch 11 '99 entitled Virginia Desuyo, et al. vs. Alfredo Bon, et al.;

3. We admit that, we the descendants and relatives of the late Santiago Bon do not have any right or interest anymore over Lots No. 1911, 1917-A, 1917-B, 1970, 1988, all of Tabaco, Cadastre, because the above lots had been already sold by our predecessor in favor of the Ziga Family, predecessor of Ex-Senator Victor Ziga since 1930, and that the above family had been continuously in possession thereof, thru their tenants since 1930, or for more than 70 years already, to our exclusion;

4. It is only our brother, Alfredo Bon, who adamantly refuses to admit the above fact and still claim rights over said properties despite the explanation of our ancestors that the above mentioned lots had been long sold by our predecessor to the Zigas...<sup>[18]</sup>

Significantly, as pointed out by the Investigating Commissioner, the Bons have not filed the appropriate action to set aside the Waiver and Quitclaim. The complainant, however, explains that they "will pursue that the *Waiver and Quitclaim* be annulled by the court" <sup>[19]</sup> in Civil Case No. T-2163 pending with the Regional Trial Court Branch 18, Tabaco City. That they have yet to do so almost four (4) years after the execution of the *Waiver and Quitclaim* diminishes, if not totally discredits, their position that they were defrauded, intimidated and deceived into signing the document.

At this time, all that the complainant offers to boost his claim that Ziga employed deceit in procuring the Bons' signatures are the latter's bare allegations to the effect that Ziga told them there was nothing wrong with the document except that they were withdrawing the Special Power of Attorney. These allegations are belied by the *Joint Affidavit*<sup>[20]</sup> of Maria Bon-Borjal and Rafael Bon-Canafe, the Bons' co-signatories, and the *Joint Affidavit*<sup>[21]</sup> of Rogelio Bon Borjal and Nida Barrameda, the subscribing witnesses to the *Waiver and Quitclaim*, both of which assert that the contents of the document were sufficiently explained to the Bons.

Given these circumstances, the presumptions that a person takes ordinary care of his concerns;<sup>[22]</sup> that private transactions have been fair and regular;<sup>[23]</sup> and that acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact<sup>[24]</sup> have not been sufficiently overcome.

However, we do find the act of Arcangel in notarizing the *Waiver and Quitclaim* without requiring all the persons who executed the document to personally appear before him and acknowledge that the same is their free act and deed an unpardonable breach of his duty as a notary public.

Section 1 of Public Act No. 2103 provides:

(a) The acknowledgement shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under the