

## FIRST DIVISION

[ A.C. No. 2611, November 15, 2000 ]

**FELY E. CORONADO, COMPLAINANT, VS. ATTY. ERNESTO FELONGCO, RESPONDENT.**

### D E C I S I O N

**PUNO, J.:**

This case originated from a letter of complaint on December 19, 1983. Complainant Fely E. Coronado alleged that Atty. Ernesto Felongco notarized a Deed of Promise to Sell purportedly signed by her deceased mother, Fe Vda. De Esteva. She charged that Atty. Felongco connived with her brother, Pacifico Esteva, Jr., who caused the preparation of the document. Pacifico allegedly wanted to get the entire inheritance left by their parents who did not know how to read nor write. The act caused dissension in their family.<sup>[1]</sup>

In his comment, respondent Atty. Felongco claimed that the document he notarized was a Deed of Promise to Sell. He alleged that on September 2, 1982, Fe Vda. De Esteva came to his office with Pacifico and Florenda Faraon, the vendee in the deed for the purpose of having the document notarized. The deed was prepared the previous day by respondent's partner, Atty. Ely Pastores. It was already signed by Esteva when it was presented to respondent. Esteva acknowledged her signature and told respondent that she signed it in her house in the presence of Faraon, Pacifico Esteva and her daughter, Irene Vda. De Cabrera.<sup>[2]</sup> When respondent asked for her residence certificate, Esteva said she left it in their house. Respondent told them to return the following day with Esteva's residence certificate so the deed could be notarized.

The residence certificate of Esteva was shown to respondent only on September 10, 1982. It was brought by Florenda Faraon alone. She did not inform respondent that Esteva had died on September 6, 1982. Instead, she told respondent that Esteva could not come as she was confined at a hospital in Banga, South Cotabato. Thus, respondent notarized the deed without knowledge about the death of Esteva.<sup>[3]</sup>

Respondent also belied that Esteva did not know how to write for she acknowledged her signature before him. He claimed that he notarized the deed in good faith.

Florenda Faraon executed an affidavit in favor of respondent. She said that on September 1, 1982, she went to the office of respondent together with Fe Vda. De Esteva and Pacifico Esteva, Jr. They wanted respondent to prepare a deed of sale. But as respondent was not present, Atty. Pastores prepared the Deed of Promise to Sell. Atty. Pastores asked them to return the next day so that respondent could notarize the deed.

Faraon and her companions brought the document with them to the house of Fe Vda. De Esteva. Esteva demanded from Faraon a partial payment of P7,000.00 and then signed the deed. They agreed that the balance of P5,000.00 shall be paid after the harvest. Esteva then needed money for her hospitalization. Faraon also requested Pacifico and Ireneia to sign the deed as witnesses.

When they returned to the office of respondent, the latter verified their signatures from them. He explained the deed to Esteva and asked for her residence certificate. Esteva, however, forgot to bring it with her. Respondent told them to return the next day and present the residence certificate of Esteva. He did not notarize the deed.

In the morning of September 10, 1982, Pacifico went to the house of Faraon and requested her to bring the deed to respondent for notarization. Faraon brought the deed to the respondent together with the residence certificate of Esteva. She informed respondent that Esteva could not come because she was confined at a hospital in Banga, South Cotabato. Pacifico allegedly did not reveal to her that Esteva had died on September 6, 1982.<sup>[4]</sup>

Pacifico, the youngest child of the deceased, also executed an affidavit<sup>[5]</sup> that corroborated that of Faraon. He explained that he did not inform Faraon about the death of Esteva for he feared that Faraon might not pay the remaining balance if she knew about it. In turn, Atty. Pastores confirmed that he helped prepare the deed.<sup>[6]</sup>

This case was referred to the Office of the Solicitor General on June 4, 1984 and then to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. On June 14, 1999, Commissioner Lydia Navarro of the IBP submitted a report finding that respondent violated the notarial law which requires the author of the document to be present before it can notarized. She recommended that respondent be suspended from his commission as Notary Public for six (6) months. On June 27, 1999, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner Navarro. It denied respondent's motion for reconsideration on September 27, 1999.

The Court agrees that respondent violated section 1 of Public Act No. 2103,<sup>[7]</sup> otherwise known as the Notarial Law, which provides that:

"Sec. 1. (a) The acknowledgment shall be 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 person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is by law required to keep a seal, and if not, his certificate shall so state."

It is thus obvious that the party acknowledging must appear before the notary public or any other person authorized to take acknowledgments of instruments or