

## EN BANC

**[ A.C. No. 11583 [Formerly CBD Case No. 11-2878], December 03, 2019 ]**

**PILAR C. PROSPERO AND CLARINDA P. CASTILLO,  
COMPLAINANTS, VS. ATTY. JOAQUIN L. DELOS SANTOS AND  
ATTY. ROBERTO A. SAN JOSE, RESPONDENTS.**

### D E C I S I O N

#### PER CURIAM:

Before the Court is a Complaint-Affidavit<sup>[1]</sup> filed by complainants, Pilar C. Prospero and Clarinda P. Castillo, on February 1, 2011, seeking the disbarment of respondents, Atty. Joaquin L. Delos Santos and Atty. Roberto A. San Jose, for gross professional misconduct, deceit, malpractice, and violation of the Code of Professional Responsibility (*CPR*) and Lawyer's Oath for their alleged falsification and notarization of documents leading to the fraudulent conveyance of a parcel of land owned by Pilar.

The antecedent facts are as follows:

In the complaint, it was narrated that Pilar and Clarinda are the niece and granddaughter, respectively, of the late Fermina Prospero, the registered owner of a parcel of land situated in Barangays Sala and Marinig, Cabuyao, Laguna, denominated as Lot 2-B of Original Certificate of Title (*OCT*) No. (0-175) 0-116, and consisting of an aggregate area of 20,384 square meters. On April 11, 1972, Fermina sold to Pilar a portion thereof consisting of 10,000 square meters. While the sale was duly annotated in the title, no new Transfer Certificate of Title (*TCT*) was issued in Pilar's name.<sup>[2]</sup> Subsequently, Fermina died on May 8, 1983. But before she passed, she left a holographic will dated June 5, 1974 bequeathing the remaining 10,384 square meters to Pilar which was presented for probate before the Regional Trial Court (*RTC*) of Manila sometime in 1984. As of the date of Pilar's complaint, however, the provisions of said will have yet to be fully implemented.

Sometime in 2007, respondent Atty. Delos Santos and a certain real estate agent named Marilou Delos Santos were introduced to Pilar to discuss the possible sale of the subject property. Because Atty. Delos Santos was introduced to be a high-ranking official of the Municipality of Cabuyao, Laguna, who was in charge of approving plans for land development, he easily gained the trust of Pilar. As such, Atty. Delos Santos convinced Pilar that she could sell her 10,000 square meter share in the property, but she first needed to execute a Special Power of Attorney (*SPA*) and give him the owner's copy of the *OCT*. But instead of covering only the 10,000 square meter portion, he deliberately included the 10, 384 square meter portion that Fernina bequeathed to Pilar. Without understanding the import of the *SPA*, Pilar, who was then already 88 years old, signed the same.<sup>[3]</sup>

Then, unknown to Pilar, Atty. Delos Santos falsified a Deed of Absolute Sale dated May 20, 2008 counterfeiting the signatures of Pilar and deceased Fermina making it appear that the latter sold to Pilar the entire 20, 384 square meter lot. He also notarized the same as if the deceased Fermina appeared before him on said date and acknowledged her "free" participation in the sale when, in fact, Fermina had long been dead at that time. Seemingly realizing that the May 20, 2008 Deed erroneously included the 10,000 square meter portion already owned by Pilar, Atty. Delos Santos falsified and notarized another document entitled Deed of Absolute Sale - Portion of Land also dated May 20, 2008, this time, supposedly conveying to Pilar only the remaining 10, 384 square meter portion. Armed with the falsified Deed of Sale, Atty. Delos Santos was, consequently, able to secure the issuance of a new TCT No. T-707979 in the name of Pilar covering the entire 20, 384 square meter lot without the knowledge and consent of the latter.<sup>[4]</sup>

According to Pilar, the falsity of both documents is plainly evident. *First*, Fermina could not have signed the documents as she was already dead as early as May 8, 1983. *Second*, the signatures of Pilar and Fermina affixed on the documents are glaringly different from the appearance and strokes of their original signatures on their Deed of Sale dated April 11, 1972. *Third*, not only are both documents dated May 20, 2008, they were also entered under the same entry in Atty. Delos Santos' notarial register as "Doc. No. 140, Page No. 28, Book No. XXXIV, Series of 2008." But basic is the rule under notarial practice that no two documents may have the same date of notarization and entry number in the notarial register of a notary public. To make matters worse, as certified by the Clerk of Court of the RTC of Biñan, Laguna, the document entered as "Doc. No. 140, Page No. 28, Book No. XXXIV, Series of 2008" in Atty. Delos Santos' notarial register was neither the Deed of Sale dated May 20, 2008, but an unrelated document entitled "Katunayan sa Pagkakabili" executed by a certain Carmela Bool on May 28, 2008.<sup>[5]</sup>

Unfortunately, Atty. Delos Santos did not stop there. Using the new TCT No. T-707979, he was able to facilitate the illegal transfer of the subject property to Hauskon Housing and Construction Products Corporation, again, without the knowledge and consent of Pilar. Particularly, in his supposed capacity as Attorney-in-Fact, Atty. Delos Santos entered into a Deed of Absolute Sale dated June 13, 2008 purporting to convey the parcel of land to Hauskon for a price of P8,306,480.00. Said deed was irregularly notarized by respondent Atty. San Jose, the in-house counsel of Hauskon without competent evidence of identity and despite previous warnings from Clarinda of Atty. Delos Santos' lack of authority.

According to complainants Pilar and Clarinda, not only were they surprised that a new TCT No. T-707979 was already issued in Pilar's name, they were also disgruntled by information they were receiving that Atty. Delos Santos was selling the subject property to Hauskon without Pilar's consent. But again, despite earnest efforts made by Clarinda to warn the officers of Hauskon the latter nonetheless transacted with Atty. Delos Santos. They insisted that Pilar was fully aware of the transactions and even claimed that they paid her the amount of P8,306,480.00 in cold cash and argued that Pilar may have just forgotten of the same. To this, however, complainants assert that Atty. Delos Santos and Hauskon could not even produce any receipt acknowledging their alleged payment. In fact, seemingly pressured with the discovery of his anomalous dealings, Atty.

Delos Santos even returned the owner's copy of OCT No. (0-175) 0-116 to Clarinda. He also surrendered a series of post-dated checks payable to him, each in the amount of P646,059.55, representing Hauskon's payment for the sale of the lot .<sup>[6]</sup>

But in a complete turnaround, Atty. Delos Santos falsified yet another Deed of Absolute Sale dated August 5, 2008 by, again, counterfeiting Pilar's signature, making it appear that she was selling the property to Hauskon for a purchase price of P3,669,120.00, and notarizing the same as if Pilar personally appeared before him; It was with the use of this deed that Atty. Delos Santos, in connivance with the representatives of Hauskon, was able to secure the cancellation of the previous TCT No. T -707979 in the name of Pilar and the issuance of a new TCT No. T-723667 in the name of Hauskon.<sup>[7]</sup> Aggrieved, complainants Pilar and Clarinda filed the instant disbarment complaint against Atty. Delos Santos and Atty. San Jose.

On the one hand, Atty. San Jose, for his part, denied the accusations against him. He claimed that when he notarized the June 13, 2008 Deed of Sale, he was not aware of any defect in Atty. Delos Santos' authority as attorney-in-fact of Pilar.<sup>[8]</sup> On the other hand, Atty. Delos Santos failed to file his Comment and Position Paper despite his filing of Urgent Motions for Extension to File Answer. First, in his motion<sup>[9]</sup> dated March 23, 2011, he claimed that he was suffering from flu and bronchitis. Next, in his motion<sup>[10]</sup> dated April 27, 2011, he reasoned that he fell from his bike and suffered a broken rib. Then, when the case was called for hearing on August 23, 2011, Atty. Delos Santos failed to appear. Thus, for his failure to file his Answer and failure to appear, he was consequently declared in default. In a Motion for Reconsideration dated October 14, 2011, he claimed, first, that he only actually received the order declaring him in default a few days ago due to the mistake of his staff in misplacing said order during inventory, and second, that he be allowed to file his Answer to explain his side.<sup>[11]</sup>

In a Report and Recommendation<sup>[12]</sup> dated November 2, 2011, the Investigating Commissioner of the Commission on Bar Discipline (*CBD*) of the Integrated Bar of the Philippines (*IBP*) recommended first, that the complaint as to Atty. San Jose be dismissed, and second, that Atty. Delos Santos be disbarred. In a Resolution<sup>[13]</sup> dated September 27, 2014, the Board of Governors (*BOG*) of the IBP adopted and approved the Report and Recommendation of the Investigating Commissioner. Subsequently, the BOG issued another Resolution<sup>[14]</sup> on February 25, 2016 affirming its previous resolution and denying the Motion for Reconsideration of Atty. Delos Santos.

In a Motion for Reconsideration he filed on April 23, 2015, Atty. Delos Santos reiterated his reasons for failing to file his Answer, specifically, his back pains from his bicycle accident. On the issue of his alleged indiscretion, he explained that it was Pilar and Malou, the real estate agent, who were persistently requesting for his help to sell the subject property as Pilar badly needed the money. Out of pity for the old woman, Atty. Delos Santos acceded. Malou then introduced him to the officers of Hauskon who were very interested in buying the property. After a series of meetings some of which were attended by Pilar, Pilar and Malou brought to him a Deed of Sale and an SPA for his notarization without informing him of the fact that Fermina was already deceased. Atty. Delos Santos further sought the Court's compassion for he only accommodated Pilar's requests out of the goodness of his heart despite the fact