

## EN BANC

[ A.C. No. 6655, October 11, 2011 ]

**PACITA CAALIM-VERZONILLA, COMPLAINANT, VS. ATTY.  
VICTORIANO G. PASCUA, RESPONDENT.**

### DECISION

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

Before the Court is the verified affidavit-complaint<sup>[1]</sup> of Pacita Caalim-Verzonilla seeking the disbarment of respondent Atty. Victoriano G. Pascua for allegedly falsifying a public document and evading the payment of correct taxes through the use of falsified documents.

Complainant alleges that on September 15, 2001, respondent prepared and notarized two Deeds of Extra-Judicial Settlement of the Estate of Deceased Lope Caalim with Sale. The first deed<sup>[2]</sup> was for a consideration of P250,000 and appears to have been executed and signed by Lope's surviving spouse, Caridad Tabarrejos, and her children (complainant, Virginia Caalim-Inong and Marivinia Caalim) in favor of spouses Madki and Shirley Mipanga. The second deed<sup>[3]</sup> was for a consideration of P1,000,000 and appears to have been executed by and for the benefit of the same parties as the first deed. The two deeds have identical registration numbers, page numbers and book numbers in the notarial portion.

Complainant avers that both deeds are spurious because all the heirs' signatures were falsified. She contends that her sister Marivinia does not know how to sign her name and was confined at the Cagayan Valley Medical Center, Tuguegarao City, at the time the deeds were allegedly signed by her, as shown by a certification<sup>[4]</sup> from said hospital. The certification, dated February 6, 2004 and signed by Dr. Alice Anghad, Medical Officer IV, attested that Marivinia has been confined at the Psychiatry Ward of the Cagayan Valley Medical Center since May 3, 1999 after being diagnosed of "Substance Induced Psychosis" and "Schizophrenia, Undifferentiated Type."

Complainant further alleges that the two deeds were not presented to any of them and they came to know of their existence only recently. She further claims that the Community Tax Certificates<sup>[5]</sup> (CTCs) in her name and in the names of her mother and her sister Marivinia were procured only by the vendee Shirley and not by them. Complainant submits the affidavit<sup>[6]</sup> executed by Edwin Gawayon, Barangay Treasurer of C-8, Claveria, Cagayan, on August 3, 2002, attesting that the CTCs were procured at the instance of Shirley and were paid without the complainant and her co-heirs personally appearing before him. Gawayon stated that the signatures and thumbmarks appearing on the CTCs are not genuine and authentic because it can be seen with the naked eyes that the signatures are similar in all three CTCs.

Lastly, complainant alleges that the two deeds were used by respondent and Shirley to annul a previously simulated deed of sale<sup>[7]</sup> dated June 20, 1979 purportedly executed by Lope in favor of the spouses Madki and Shirley Mipanga. Said deed was likewise a complete nullity because at that time Shirley Mipanga was only sixteen years old and still single.

In his comment,<sup>[8]</sup> respondent admits having prepared and notarized the two disputed Deeds of Extra-Judicial Settlement of the Estate with Sale (subject deeds), but denies any irregularity in their execution. He claims that the preparation and notarization of the subject deeds were made under the following circumstances:

In the morning of September 15, 2001, complainant, Caridad, Virginia and Shirley Mipanga went to his house and requested him to prepare a deed of sale of a residential lot located in Claveria, Cagayan. He was informed by the parties that the agreed purchase price is P1,000,000 and was presented the certificate of title to the property. Upon finding that the registered owner is "Lope Caalim, married to Caridad Tabarrejos" and knowing that Lope already died sometime in the 1980s, he asked for, and was given, the names and personal circumstances of Lope's surviving children. He asked where Marivinia was, but Caridad told him that Marivinia remained home as she was not feeling well. As Caridad assured him that they will fetch Marivinia after the deed of conveyance is prepared, he proceeded to ask the parties to present their CTCs. Caridad and Pacita, however, told him that they have not secured their CTCs while Virginia forgot to bring hers. So he instructed them to get CTCs from Claveria.

An hour later, Caridad and Shirley came back with the CTCs of Caridad, Virginia, complainant and Marivinia. After he finished typing the deed and the details of the CTCs, Caridad said that she will bring the deed with her to Claveria for her daughters to sign. He then told them that it was necessary for him to meet them all in one place for them to acknowledge the deed before him as notary public. It was agreed upon that they will all meet at the house of the Mipangas between 11:00 a.m. and 12:00 noon on that same day.

Respondent arrived at the Mipanga residence shortly before 12:00 noon. There he saw Shirley, Caridad, complainant, Pacita and Marivinia with two other persons whom he later learned were the instrumental witnesses to the execution of the document. Upon being informed that the parties have already affixed their signatures on the deed, he examined the document then inquired from the heirs if the signatures appearing therein were theirs and if they were truly selling the property for P1,000,000. The heirs answered in the affirmative, thereby ratifying and acknowledging the instrument and its contents as their own free and voluntary act and deed. Thus, he notarized the document and then gave the original and two carbon copies to Shirley while leaving two in his possession.

Respondent adds that Shirley thereafter asked him what steps were needed to effect registration of the deed and transfer of the title in her and her husband's name. He replied that all the unpaid land taxes should be paid including the capital gains tax, documentary stamp taxes and estate tax to the Bureau of Internal Revenue (BIR) which will then issue the necessary clearance for registration. When asked how much taxes are payable, he replied that it depends on the assessment of the BIR examiner which will be based on the zonal value or selling price stated in the deed

of sale. He added that the estate taxes due, with interests and surcharges, would also have to be paid. Since the consideration for the sale is P1,000,000, the taxes payable was quite enormous. Shirley asked him who between the vendor and the vendee should pay the taxes, and he replied that under the law, it is the obligation of the vendors to pay said taxes but it still depends upon the agreement of the parties. He asked if there was already an agreement on the matter, but the parties replied in the negative.

Shirley then told the vendors that they should shoulder the payment of taxes. Caridad and her co-vendors, however, refused and said that a big portion of the P1,000,000 paid to them was already used by them to pay and settle their other obligations. Shirley then offered to pay one-half of whatever amount the BIR will assess, but Caridad insisted that another document be prepared stating a reduced selling price of only P250,000 so that they need not contribute to the payment of taxes since Shirley was anyway already willing to pay one-half of the taxes based on the selling price stated in the first deed. This resulted in a heated discussion between the parties, which was, however, later resolved by an agreement to execute a second deed. The prospect of preparing an additional deed, however, irritated respondent as it meant additional work for him. Thus, respondent went home.

Later, the parties visited respondent at his house and pleaded with him to prepare the second deed with the reduced selling price. Moved by his humane and compassionate disposition, respondent gave in to the parties' plea.

In the presence of all the heirs, the vendees and the instrumental witnesses, respondent prepared and notarized the second deed providing for the lower consideration of only P250,000. He used the same document number, page number and book number in the notarial portion as the first deed because according to him, the second deed was intended by the parties to supplant the first.

Respondent denies complainant's assertions that the two deeds are simulated and falsified, averring that as stated above, all the parties acknowledged the same before him. Likewise, he and his clients, the spouses Madki and Shirley Mipanga, presented the subject deeds as exhibits in Civil Case No. 2761-S also pending before the Regional Trial Court (RTC), Branch 12, of Sanchez Mira, Cagayan.

As to the allegation that Marivinia did not appear before him as she was allegedly under confinement at the Cagayan Valley Medical Center on September 15, 2001, respondent cites a medical certificate<sup>[9]</sup> stating that Marivinia was confined in said hospital from May 3, 1999 to August 10, 1999. He also points out that Marivinia is one of the plaintiffs in Civil Case No. 2836-S pending before the RTC, Branch 12, Sanchez Mira, Cagayan, for the annulment of the subject deeds, and nothing in the complaint states that she is mentally or physically incapacitated. Otherwise, her co-plaintiffs would have asked the appointment of a guardian for her.

By Resolution<sup>[10]</sup> dated August 10, 2005, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In a Report and Recommendation<sup>[11]</sup> dated May 3, 2007, Commissioner Jose

Roderick F. Fernando found respondent administratively liable on account of his indispensable participation in an act designed to defraud the government. He recommended that respondent be suspended from the practice of law for three months and that his notarial commission, if still existing, be revoked and that respondent be prohibited from being commissioned as a notary public for two years.

According to Commissioner Fernando, respondent did not offer any tenable defense to justify his actions. As a notary, it was his responsibility to ensure that the solemnities of the act of notarization were followed. As a lawyer, it was likewise incumbent upon him that the document he drafted and subsequently notarized was neither unlawful nor fraudulent. Commissioner Fernando ruled that respondent failed on both counts since he drafted a document that reflected an untruthful consideration that served to reduce unlawfully the tax due to the government. Then he completed the act by likewise notarizing and thus converting the document into a public document.

On June 26, 2007, the IBP Board of Governors adopted and approved Commissioner Fernando's report and recommendation but imposed a higher penalty on respondent. Its Resolution No. XVII-2007-285 reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A;" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Notarial Law and for his participation to a transaction that effectively defrauded the government, Atty. Victoriano G. Pascua is hereby **SUSPENDED** from the practice of law for two (2) years and **SUSPENSION** of his Notarial Commission for two (2) years with **Warning** that a similar violation in the future will be dealt with severely.<sup>[12]</sup>

The above resolution is well taken.

By respondent's own account of the circumstances surrounding the execution and notarization of the subject deeds of sale, there is a clear basis for disciplining him as a member of the bar and as notary public.

Respondent did not deny preparing and notarizing the subject deeds. He avers that the true consideration for the transaction is P1,000,000 as allegedly agreed upon by the parties when they appeared before him for the preparation of the first document as well as the notarization thereof. He then claimed to have been "moved by his humane and compassionate disposition" when he acceded to the parties' plea that he prepare and notarize the second deed with a lower consideration of P250,000 in order to reduce the corresponding tax liability. However, as noted by Commissioner Fernando, the two deeds were used by respondent and his client as evidence in a judicial proceeding (Civil Case No. 2671-S), which only meant that both documents still subsist and hence contrary to respondent's contention that the second deed reflecting a lower consideration was intended to supersede the first deed.