

FIRST DIVISION

[A.C. No. 7297, September 29, 2009]

IMELDA BIDES-ULASO, COMPLAINANT, VS. ATTY. EDITA NOE-LACSAMANA, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

The decisive question to be resolved in this administrative proceeding is whether or not the notarization of the jurat of the *amended verification and affidavit of non-forum shopping* attached to the initiatory pleading even before the plaintiff-client has affixed her own signature amounts to censurable conduct on the part of the notary-counsel.

The Integrated Bar of the Philippines (IBP) found respondent Atty. Edita Noe-Lacsamana, the notary-counsel, guilty of gross negligence and of a violation of the Notarial Law; and recommended her suspension from the practice of law for six months.^[1] She now pleads her cause before us.^[2]

Antecedents

The respondent was the counsel of Irene Bides (Bides) when the latter filed a civil action in the Regional Trial Court (RTC) in Pasig City against complainant Imelda Bides-Ulaso (Ulaso), her own niece; Alan Ulaso (Ulaso's husband); Bartolome Bides (Ulaso's father and Bides' brother); the Register of Deeds of Region II, Metro Manila; and the Revenue District Office of San Juan, Metro Manila. The action was docketed as Special Civil Action (SCA) No. 2481 and raffled to Branch 167 of the RTC.

Bides amended the complaint on June 23, 2003 to demand the declaration of nullity of the *deed of sale* dated May 27, 1996 pertaining to the parcel of land situated in San Juan, Metro Manila of which Bides was the registered owner. Bides averred that Ulaso had taken her owner's certificate of title during her absence from her residence and that Ulaso had then caused the transfer of the property to herself through the fraudulent execution of the *deed of sale*.^[3]

The amended complaint of Bides contained a so-called *amended verification and affidavit of non-forum shopping* dated June 18, 2003, on which was a signature preceded by the word "for" above the printed name "IRENE BIDES." The signature bore a positive resemblance to the respondent's signature as the notary on the jurat of the *amended verification and affidavit of non-forum shopping*.^[4] Seeing the defective execution of the *amended verification and affidavit of non-forum shopping*, Ulaso and her co-defendants filed a *motion to dismiss* on July 22, 2003,^[5] citing the defect as a ground, along with another.

Through the respondent as her counsel, Bides opposed the *motion to dismiss* on August 6, 2003, claiming an inadvertent mistake committed in relation to the signature appearing above the printed name of the affiant, but offering the excuse that the defective *amended verification and affidavit of non-forum shopping* had actually been only a "sample-draft" intended to instruct Irene Mallari, the respondent's new secretary, on where Bides, as affiant, should sign. Bides also claimed that the respondent's signature above the printed name of the affiant had not been intended to replace the signature of Bides as the affiant; that the correct *amended verification and affidavit of non-forum shopping* to be appended to the amended complaint had been executed only on June 23, 2003 due to her (Bides) delayed arrival from her home province of Abra; and that Mallari had failed to replace the defective document with the correct *amended verification and affidavit of non-forum shopping*.^[6]

The RTC denied the *motion to dismiss* and even declared Ulaso and her co-defendants in default. The RTC ultimately decided the action in favor of Bides, granting reliefs like the nullification of the *deed of sale* between Bides, as seller, and Ulaso, as buyer.^[7]

On appeal, the Court of Appeals affirmed the RTC's judgment.^[8]

Bides and the respondent brought other proceedings against Ulaso. On September 26, 2003, Bides sued Ulaso and others for ejectment in the Metropolitan Trial Court (MeTC) in San Juan, Metro Manila, to evict them from the premises of Bides' property subject of the RTC case.^[9] She next formally charged Ulaso and two others with falsification of a public document in the Manila Prosecutor's Office for the execution of the nullified *deed of sale*, resulting in the criminal prosecution of Ulaso and the others before the MeTC, Branch 17, in Manila.^[10] The respondent actively prosecuted the criminal charge against Ulaso after being granted by the MeTC the express authority for that purpose pursuant to the *Rules of Court*.^[11] The respondent herself commenced disbarment proceedings in the IBP against Atty. Yolando Busmente, Ulaso's counsel; and proceedings for usurpation against Elizabeth de la Rosa, for appearing as Ulaso's other counsel although she had not been a member of the Philippine Bar.^[12] The disbarment proceedings against Atty. Busmente were docketed as CBD Case No. 05-1462.

To counteract the aforesaid moves of Bides and the respondent, Ulaso initiated this proceeding against the respondent on March 2, 2005, praying for the latter's disbarment due to her act of signing the *amended verification and affidavit of non-forum shopping* attached to the amended complaint of Bides and notarizing the document *sans* the signature of Bides and despite the non-appearance of Bides before her.^[13]

On July 21, 2005, Bides and Ulaso entered into a compromise agreement to settle the criminal case for falsification, whereby Bides agreed to drop the criminal charge against Ulaso in exchange for, among others, Ulaso's withdrawal of the disbarment complaint against the respondent.^[14] The MeTC, Branch 17, in Manila approved the compromise agreement.

The agreement on the dropping of the criminal case notwithstanding, the complaint for disbarment continued against the respondent. The IBP Committee on Bar Discipline designated Atty. Patrick M. Velez as Investigating Commissioner. After due hearing, Atty. Velez submitted his *report and recommendation* dated December 8, 2005,^[15] in which he rendered the following resolution and findings, viz:

IV. RESOLUTION AND FINDINGS

We are not impressed with the excuses presented by the respondent. The lapse committed by the respondent is clear based on the facts and pieces of evidence submitted in this case.

The respondent admits signing the questioned verification and there is also no dispute that she notarized the same. Even if her tale is true, the fact that she notarized her own signature is inexcusable. It cannot even be pardoned as a simple act of negligence as the standards set by notarial law are stringent enough to require all notaries public to exercise caution in order to protect the integrity and veracity of documents.

We also cannot understand the fact that all the pleadings submitted to the court do not bear the corrected verification and certification. It may be easy to convince us that she is really innocent of the charges if at least one of those documents or even that one copy furnished to the other party in that case would bear at least one such corrected verification. But no, there was none at all. This certainly militates against the position that respondent lawyer took.

We have already stated earlier that lawyers may be disciplined for misconduct as a notary public, and now emphasize that the respondent can not even hide behind the mantle of good faith or throw blame to her secretary. Even as the Supreme Court stated that:

"If the document he notarized turned out to have been falsified, without the fact being known to him at the time, he may still be admonished for not taking pains to ascertain the identity of the person who acknowledged the instrument before him." (Cailing vs. Espinoza, 103 Phil. 1165)

Indeed, we may even consider her being grossly negligent in allowing her secretary to commit that error. She gave her secretary blanket authority where she should have exercise sufficient prudence to protect the integrity of her documents. "The burden of preparing a complete pleading falls on counsel's shoulders, not on the messenger" (Tan v. Court of Appeals, 295 SCRA 765 [1998]) and not even on the secretary.

Besides, even if the story she tells us is true, it would appear that the document was pre-notarized based on the very averments made in Irene Mallari's Affidavit of Merit when she stated that:

"3. Atty. Lacsamana was scheduled for an out-of-town trip on Monday, June 23, 2003, thus she hurriedly notarized another prepared set of Amended Verification dated June 23, 2003, and repeatedly told me to file the amended complaint not later than that afternoon to this Honorable Court after replacing its old June 18, 2003-Amended Verification;"

"4. Irene Bides arrived only after lunch and after her niece cause her to sign the amended verification, I replaced the last page of the sets of the Amended Complaint without knowing that I missed its original copy and the copy I hurriedly sent to the counsel for the respondent."

Respondent was not around when the document was signed by the respondent's client. That is a violation of notarial law and deceitful conduct of the part of a lawyer, since he is notarizing a document which he did not actually witness being signed in his presence.

Even page 8 of the respondent's notarial register will not help her in this case. All that it shows is the alleged document no. 36, but what about document no. 35 which should appear in page 7 of Book no. 1? The second document was notarized on another page and it is incumbent on the respondent to show that the same was really not recorded as such. The failure of respondent to present such evidence should be treated as disputable presumption that the same would be detrimental to his interests if so presented. Thus, when the circumstances in proof tend to fix the liability on a party who has it in his power to offer evidence of all facts as they existed and rebut the inference which the circumstances in proof tend to establish, and he fails to offer such proof, the natural conclusion is that proof if produced, instead of rebutting, would support the inference against him, and the court is justified in acting upon that conclusion (Herrera, Remedial Law, VI, 1999 ed p. 63 citing Worcester vs. Ocampo, 22 Phil. 42).

This commission feels that respondent is not being truthful with her defenses. The problem with using such unjustified excuses is that one lie will pile up over the other. Somewhere along the way, the story will leak out its sordid details exposing the excuse as a mere concocted tale and nothing more.

We have the impression that respondent is trying to mislead this Commission, which we cannot allow.

The issue in this case is really limited and focused on the signature and the notarization of the verification and certification against forum shopping for "Irene Bides". Does it constitute actionable misconduct? The other matters raised by the respondent have little bearing herein because it refers to other cases which she has against the complainant. But the causes of action are different so we will deign to entertain such other matters.

The practice of law is a privilege and respondent has gravely abused the same:

"The practice of law is a privilege burdened with conditions. Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining member of good standing of the bar and for enjoying the privilege to practice law. Any breach by lawyer of any of these conditions makes him unworthy of the trust and confidence which courts and clients must, by necessity, repose in him or unfit to continue in the exercise of his professional privilege. His misconduct justifies disciplinary action against him or the withdrawal of his privilege to practice law." (Agpalo, Legal Ethics, 1989 Ed., 392; citation of cases omitted.)

What is far worse is that the respondent has taken a habit of making such excuses for similar mistakes she committed. This Commission notes that the respondent herein is also a complainant in a different case against Atty. Yolando Busmente docketed as CBD case no. 05-1462. In that case, again no certification against non-forum shopping was made in that case, but instead of admitting the lack thereof (as it is not absolutely required in CBD cases) she went on to create a different story that her lawyer was negligent. Unfortunately said lawyer is already dead and cannot answer her accusations. She tried to pass off another set of certification which allegedly was not included with the original documents. What is however telling is that in all the seven (7) copies submitted to the CBD and that one (1) copy furnished to the respondents in that case, no such certification appears.

This unacceptable pattern of behavior compels us to recommend stricter measures to ensure that respondent lawyer is reminded of her solemn duty and obligation to be truthful and honest.

WHEREFORE, it is hereby recommended that the respondent lawyer, Atty. Edita Noe-Lacsamana be suspended from the practice of law for a period of not less than two (2) years and that she be required to take three (3) units of MCLE required legal ethics before she may be allowed to practice law again.^[16]

In its Resolution No. XVII-2006-272 dated May 26, 2006, the IBP Board of Governors approved the *report and recommendation* of the Investigating Commissioner with modification,^[17] to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, 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