



Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

SEP 15 2017

THIRD DIVISION

**ELIEZER F. CASTRO and
BETHULIA C.
CASAFRANCISCO,**
Complainants,

A.C. No. 7824

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
JARDELEZA,
TIJAM, and
REYES, JR., JJ.

- versus -

**ATTY. JOHN BIGAY, JR. and
ATTY. JUAN SIAPNO, JR.,**
Respondents.

Promulgated:

July 19, 2017

Wilfredo V. Lapitan

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DECISION

TIJAM, J.:

This is a disbarment case against respondents Atty. John Bigay, Jr. (Atty. Bigay) and Atty. Juan Siapno, Jr. (Atty. Siapno) filed by complainants Eliezer F. Castro (Eliezer) and Bethulia C. Casafrancisco (Bethulia).

The Facts

Originally, the complaint¹ filed directly to this Court imputed several violations, criminal and administrative in nature, against respondents such as perjury, estafa through falsification of public documents, obstruction of justice, deceit, and grave misconduct, among others. The case was then referred to the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) for investigation and recommendation. Upon preliminary conference, it was agreed upon that the issues, stipulations, and admissions

¹ Rollo, pp. 1-7.

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shall be limited to the pleadings filed before the said office.² Thus, the factual backdrop of the case is as follows:

The complaint alleged that sometime in August 1989, Bethulia engaged Atty. Bigay's legal services for the settlement of her late father's estate, which includes a 411-square meter parcel of land situated in Poblacion, Lingayen, Pangasinan. Atty. Bigay also represented Bethulia in several cases related to the estate's settlement.³

The complainants, however, discovered that Atty. Bigay had vested interest in having a share in the subject inheritance. According to the complainants, Atty. Bigay, with the cooperation of Atty. Siapno, was able to transfer an 80 sq m portion (subject property) of the said parcel of land to his and her wife's name by simulating contracts of sale, to wit: (1) a Deed of Absolute Sale dated June 1, 2005, covering the sale of the subject property to spouses Peter and Jocelyn Macaraeg (Spouses Macaraeg); and (2) a Deed of Absolute Sale dated October 4, 2006, covering the sale of the subject property to Atty. Bigay and his wife. These deeds were notarized by Atty. Siapno on the said dates.⁴

The instant complaint is, thus, filed against Atty. Bigay for having an interest in a property subject of litigation/s which he is handling and for forging and simulating deeds to the prejudice of his client and the latter's co-heirs.⁵

For his part, Atty. Bigay denied being Bethulia's counsel in 1989, averring that he passed the bar exam only in 1992.⁶ Further, he averred that the subject estate had long been settled and the property subject of the deeds of sale had been apportioned to Bethulia way back in 1984 through extra-judicial partition.⁷ To show Bethulia's ownership of the 411-sq m parcel of land prior to his and his wife's acquisition of the 80 sq m portion thereof, Atty. Bigay presented: (1) a Tax Declaration under Bethulia's name; (2) annotations showing that Bethulia mortgaged the property to the bank in 1992 and 1996; (3) the Deed of Sale which shows that Bethulia sold the subject property to Macaraeg; (4) and a deed of donation which shows that Bethulia donated the remaining 331 sq m portion of the said parcel of land in 2005.⁸ These circumstances, according to Atty. Bigay, clearly show that there was no irregularity in his and his wife's acquisition of the said portion, contrary to complainants' imputations.

² Id. at 429.

³ Id. at 2.

⁴ Id. at 4.

⁵ Id.

⁶ Id. at 52.

⁷ Id. at 55.

⁸ Id. at 55-56.

For his part, Atty. Siapno denied having notarized the subject deeds of sale. Specifically, Atty. Siapno averred that the said deeds are falsified, that his signatures therein as notary public were forged, and that he has never met Atty. Bigay, Bethulia, and Macaraeg.⁹

Report and Recommendation of the IBP-CBD

Relying upon Atty. Siapno's claim that his signatures in the subject deeds were forged and that he had never personally met Atty. Bigay, Bethulia, and Macaraeg, the IBP-CBD was persuaded that the said deeds were falsified. Then, by virtue of Atty. Bigay and his wife's notorious claim over the property, the IBP-CBD theorized that the said spouses are the only persons interested in the property and the only beneficiary of the said simulated sales. The IBP-CBD then proceeded to conclude that only a person who has a legal mentality would be able to formulate such tactic to make it appear that Spouses Bigay were buyers in good faith. In addition, the IBP-CBD cited the principle that the person who is in possession of a forged/falsified document and made use and benefited from the same is presumed to be the forger/falsifier. Pinning the guilt mainly on Atty. Bigay, the IBP-CBD recommended in its November 6, 2009 Report and Recommendation,¹⁰ thus:

WHEREFORE, it is most respectfully recommended that respondent John L. Bigay, Jr. be SUSPENDED for six (6) months from the active practice of law. For respondent Juan C. Siapno, Jr., he is WARNED to be extra careful with his notarial paraphernalia.¹¹

The IBP Board of Governors Resolutions

On February 13, 2013, the IBP Board of Governors issued Resolution No. XX-2013-131,¹² which reads:

*RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in 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 for using a falsified Deed of Sale and benefiting (sic), Atty. John L. Bigay, Jr. is hereby **SUSPENDED from the practice of law for three (3) months** and Atty. Juan C. Siapno, Jr. is hereby **WARNED** to be circumspect in his notarial transaction. (Emphasis supplied)*

⁹ Id. at 30.

¹⁰ Id. at 490-494.

¹¹ Id. at 494.

¹² Id. at 489.

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Atty. Bigay's Motion for Reconsideration¹³ was denied by the IBP Board of Governors in its Resolution No. XXI-2014-187¹⁴ dated March 23, 2014, thus:

RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-131 dated February 13, 2013 is hereby **AFFIRMED**.¹⁵

Having a final say on the matter of disciplining members of the bar, We now resolve the instant complaint.

Issue

Should the respondents be held administratively liable based on the allegations in the pleadings of all parties on record?

Our Ruling

It is well to remember that in disbarment proceedings, the burden of proof rests upon the complainant. For the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.¹⁶

It is settled that considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar.¹⁷ Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.¹⁸

In the absence of preponderant evidence, the presumption of innocence of the lawyer subsists and the complaint against him must be dismissed.¹⁹

¹³ Id. at 495-501.

¹⁴ Id. at 511.

¹⁵ Id. at 510.

¹⁶ *Francia v. Atty. Abdon*, A.C. No. 10031, July 23, 2014.

¹⁷ Id. citing *Aba v. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011.

¹⁸ Id.

¹⁹ Id.

The IBP-CBD found Atty. Bigay guilty of forging the subject deeds of sale and using the same for his benefit, hence, it recommended the latter's suspension from the practice of law for six months. Atty. Siapno, on the other hand, was merely warned to be extra careful with his notarial paraphernalia, the IBP-CBD relying on the latter's allegations and denial.

However, the findings and conclusions of the IBP lack factual and legal support.

As can be gleaned from the report and recommendation of the IBP-CBD quoted hereunder, its findings were merely based on bare allegations, assumptions, conjectures, and disputable legal presumption. Pertinent portions of the said report and recommendation read:

Respondent John Bigay, Jr. was retained by complainant/petitioner Bethulia Casafrancisco as legal counsel/adviser of the heirs of the late Luis M. Castro, for possible division/settlement of their inheritance among the said nine heirs. x x x.

Respondent Juan Siapno **claimed** that his signatures were falsified in [the subject deeds]. He further **claimed** that he had not met personally respondent John Bigay. Also, Bethulia Casafrancisco, Peter Macaraeg, and Jocelyn Macaraeg did not appear before him.

On the other hand, respondent John Bigay with the use of **alleged** falsified Deeds of Absolute Sale made it appear that complainant Bethulia Casafrancisco sold portion of 80 square meters to Peter M. Macaraeg to simulate the sale not a direct sale from Bethulia Casafrancisco to the spouses respondent John Bigay and Glenda Lee Bigay.

Spouses Atty. John L. Bigay and Glenda Lee J. Bigay are the only two persons **appearing** to have interest and benefited on the sale x x x as clearly manifested in their Affidavit of Adverse Claim, Notice of Rights and Ownership and photographs of the property showing that said property is already acquired by them. x x x.

Being the interested and now the owners of the above-mentioned portion of land, Atty. John L. Bigay and wife Glenda Lee J. Bigay are **presumed** to know who really made the **alleged forgery/falsification** in this case. If it were true that there was an agreement between Atty. Bigay and his client Bethulia C. Casafrancisco as to the payment of his legal services to be taken from her share on the properties subject of litigations, why the [sic] diversionary tactic employed in the first Deed of Absolute Sale from Bethulia C. Casafrancisco to the alleged fictitious spouses Peter and Jocelyn Macaraeg and the latter to spouses Atty. John L. Bigay and Glenda Lee J. Bigay? This tactic, for sure, was planned by one of legal mentality just to make it appear that they (Bigay) appear to be buyers in good faith and for value.



The facts and circumstances above explained squarely fall on that leading case of *People v. Manansala* where the court held that "He who is in possession of a forged/falsified document and made use and benefited from the same is **presumed** to be the forger/falsifier." x x x.²⁰ (Emphasis supplied)

After a careful review of the factual backdrop of the case and available evidence on record, the Court finds that the evidence submitted by the complainants, even if considered together with those presented by Atty. Siapno, fell short of the required quantum of proof. Aside from bare allegations, no evidence was presented to clearly and convincingly establish that Atty. Bigay engaged in unlawful and dishonest conduct, specifically, in forging and/or falsifying deeds of sale for his benefit and dealing with the property of his client under litigation.

To begin with, the allegation of forgery was not clearly substantiated. There is nothing on record that would show that the contracts were simulated, much less that the same were forged and/or falsified by Spouses Bigay. Atty. Siapno may have corroborated complainants' claim of forgery by alleging that he did not notarize and had never met the parties in the said deeds. We, however, could not accept hook, line, and sinker, the unsupported and self-serving claims and denial of Atty. Siapno. The complainants likewise did not adduce any evidence to support their imputations against Atty. Bigay.

On the other hand, Atty. Bigay presented sufficient evidence against the accusations of forgery and engaging in the prohibited practice of dealing with properties under litigation. He presented the notarized deeds of extrajudicial settlement of estate and partition executed by Bethulia and her sisters in 1984, which shows that the 411 sq m portion of the subject parcel of land had already been allocated to Bethulia way back in 1984 as her share in the estate. This was affirmed by the deed of quitclaim and renunciation of rights executed by Bethulia and her sister Minerva in the same year. A tax declaration was then issued in the name of Bethulia over the said property.

Further, the notarized Deed of Sale of the subject property clearly states that the same was sold by Bethulia to Macaraeg. Although the validity of the said deed was disputed, no sufficient proof was presented to support the claim of forgery or irregularity in the execution of the same. That the subject property was no longer available for disposal, as the same was already sold to Macaraeg, is affirmed by the deed of donation executed by Bethulia in favor of her children which covers only 331 sq m of the 411-sq m parcel of land. Lastly, the Deed of Sale executed between Macaraeg and Spouses Bigay over the subject property is existent albeit its validity

²⁰ *Rollo*, pp. 516-517.

was disputed, but then again, no proof was presented to support the claim of invalidity.

Let it be made clear, however, that neither the IBP nor this Court has the authority to inquire into or determine the rights of the parties, specifically the complainants and Atty. Bigay, over the property involved herein. We also do not attempt to make any determination as to the validity or otherwise of the subject documents, or the regularity or otherwise of the subject sales. Our function in this administrative case is limited to disciplining lawyers.²¹ The pronouncements that We make in this case, thus, are not determinative of any issues of law and facts regarding the parties' legal rights over the disputed property.

At any rate, whether or not We take into consideration such pieces of evidence, the fact still remains that the records are barren of any proof to support the accusations against Atty. Bigay in the instant administrative case.

Section 3(a), Rule 131 of the Rules of Court (Rules) provides that every person is presumed innocent of a crime or wrongdoing. Thus, this Court has consistently held that an attorney enjoys the legal presumption that he or she is innocent of the charges against him or her until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.²²

Thus, without such required proof to overcome the presumption of innocence, this Court will not hesitate to dismiss an administrative case against a member of the Bar.

As to Atty. Siapno's liability, from his own admissions, it cannot be doubted that he is guilty of dereliction of duty as a notary public. It was admitted that the questioned deeds of sale bore the impression of his notarial seal. He, however, maintains that he did not notarize the said documents and that his signatures therein were forged, which, however, were not proven in this case. He admitted that he has no sole access and control of his notarial seal as other persons could make use of the same without his consent or knowledge.

²¹ *Gemina v. Atty. Madamba*, A.C. No. 6689, August 24, 2011.

²² *Aba, et al. v. Atty. De Guzman, Jr., et al.*, A.C. No. 7649, December 14, 2011.

In *Gemina v. Atty. Madamba*,²³ the Court held that:

A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution.

A notary public exercises duties calling for carefulness and faithfulness.²⁴

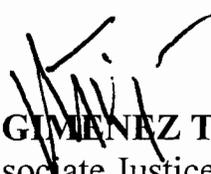
The Notarial Law and the 2004 Rules on Notarial Practice require a duly commissioned notary public to refrain from committing any dereliction or any act which may serve as a cause for the revocation of his commission or the imposition of administrative sanctions.²⁵ Thus, Atty. Siapno's excuse cited above cannot absolve him from liability.

Anent the penalty, considering that this is Atty. Siapno's first infraction and that it was not clearly proven that there was indeed an illegal transaction in this case or that he participated therein, We find that the appropriate penalty is reprimand.

WHEREFORE, premises considered, the instant administrative case against Atty. John Bigay, Jr. is **DISMISSED**. On the other hand, Atty. Juan Siapno, Jr. is found guilty of violating the Notarial Law and is accordingly, meted out the penalty of **REPRIMAND**, with the stern warning that a repetition of the same or similar act will be dealt with more severely.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

²³ Supra note 21.

²⁴ Id.

²⁵ Id.

WE CONCUR:

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PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Francis E. Jardeleza
FRANCIS E. JARDELEZA
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

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