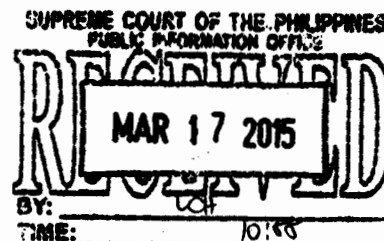




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **February 9, 2015**, which reads as follows:

“A.C. No. 10703 (*Renato S. Relampagos vs. Atty. Urbano H. Lagunay*). – Before this Court is a Verified Letter-Complaint¹ dated November 14, 2014 against Atty. Urbano H. Lagunay (Atty. Lagunay) for his **Disbarment** on the ground of “*Gross Violations of the Code of Professional Responsibility of the Integrated Bar of the Philippines, particularly Rule 1.01 and 1.03 of Canon 1, as well as Rule 19.02 of Canon 19, inter alia, as well as of the Lawyer’s Oath, to include the ground of Grave/Patent Misconduct and/or Gross Ignorance of the Law.*”

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct;

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man’s cause; and

Rule 19.02 – A lawyer who has received information that his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same.

Renato Relampagos (complainant) alleged that Atty. Lagunay violated his oath as a lawyer and a notary public when he notarized a Deed of Transfer in 1979 notwithstanding his personal knowledge that the title to the subject land proceeded from a Free Patent under which any transfer outside of the family of the patentee is prohibited for five years. Moreover, he claimed that Atty. Lagunay actively advised and assisted his clients, the other co-owners and their heirs, in retaining custody, administration and benefits of the property, including the portion thereof which the complainant’s mother had purchased in 1975, to his and his parents’ prejudice.

¹ Rollo, pp. 1-11.

Antecedent Facts

In 1957, Oliva S. Dancel (Oliva) purchased a commercial lot located in Moto Nortè, Loon, Bohol, with an approximate area of 1,816 square meters, and declared for tax purposes under Tax Declaration No. D-12729. On October 25, 1975, Oliva executed a **Deed of Absolute Sale**² for ₱15,000.00 in favor of her sister, Vivencia S. Relampagos (Vivencia), married to Celestino Relampagos (Celestino) and mother of the complainant, over one-third of said commercial lot.

In April 1979, Oliva executed a *Deed of Donation* over her interest in the said lot in favor of her son and sole heir, Apolonio S. Dancel (Apolonio). On April 6, 1979, Original Certificate of Title (OCT) No. 38028 was issued over the entire lot in the name of Apolonio, married to Felipeñeta Salinas (Felipeñeta), on the basis of a free patent application filed by Oliva.

On July 11, 1979, the spouses Apolonio and Felipeñeta Dancel (spouses Dancel) executed a **Deed of Transfer**³ in favor of Apolonio's aunt, Vivencia, over the one-third portion of the lot which Vivencia purchased from Oliva in 1975. The said instrument was intended to acknowledge/confirm the sale of one-third of the subject lot to Vivencia, and to convey the said share to Vivencia's surviving spouse, Celestino. Apparently, Vivencia died on February 19, 1977 without having acquired physical possession thereof.

However, the Deed of Transfer was refused registration by the Register of Deeds because it violated the five-year prohibition on free patent titles.

According to the complainant, Atty. Lagunay notarized the Deed of Transfer knowing that the title to the subject lot was obtained by free patent in 1979 and therefore the transfer was prohibited for five years following the grant; that Atty. Lagunay never advised his clients to surrender to Vivencia or her heirs the one-third portion she purchased (now the belated subject of the Deed of Transfer in favor of Celestino); and further, Atty. Lagunay's wife, Carollette Lagunay (Carollette) signed as an instrumental witness in the Deed of Transfer.

The complainant further alleged that after the death of the spouses Dancel, Atty. Lagunay continued to advise their children not to cede possession and ownership of the one-third portion sold to Vivencia; that Atty. Lagunay even represented the spouses Dancel as their counsel in the Regional Trial Court (RTC) of Tagbilaran City, Bohol, Branch 4, (as plaintiffs) in Civil Case No. 3276, for recovery of possession and quieting

² Id. at 14.

³ Id. at 12.

of title, and in Civil Case No. 3489 (as defendants), for rescission of lease contracts and declaration of nullity of mortgage.

In the consolidated decision⁴ dated October 11, 1988 of the RTC in the above two cases, it was established that in September 1957, Oliva executed a *pacto de retro* sale over her property to secure a ₱400.00 loan. Again on September 19, 1966, she mortgaged the said property for ₱6,000.00. Oliva had been leasing out portions of her commercial lot before she donated the same to her son Apolonio in 1979; that Atty. Lagunay even advised the heirs of Apolonio to file Civil Case No. 326 with the Municipal Circuit Trial Court of Loon, Bohol on September 4, 2014, for forcible entry against several former commercial lessees.⁵

Ruling of the Court

The disbarment complaint is dismissed in the absence of a *prima facie* case against Atty. Lagunay.

There is no dispute that OCT No. 38028, issued on April 6, 1979⁶ in the name of Apolonio, married to Felipeñeta, proceeded from a Free Patent which Oliva earlier applied for. This administrative route to obtain title over the subject property was preferred rather than going through a judicial confirmation of her imperfect title, which would have been expensive and protracted. While the Deed of Transfer was executed in 1979 in apparent violation of the five-year prohibition, it can not be denied that Oliva had owned the land when she first executed a *pacto de retro* sale thereof in 1957. Subsequently, she also mortgaged it and leased portions thereof to others. There is thus no showing that the State was fraudulently deprived of public property, and more importantly, there is thus no allegation or proof that Atty. Lagunay knowingly abetted any scheme to defraud the state or anyone else through the subsequent sale, transfer or lease of the said land. This is chiefly the charge against Atty. Lagunay which clearly has no basis.

Concerning the litigations mentioned in the complaint, there is no showing that Atty. Lagunay represented the heirs of Apolonio knowing that their objective was to deprive the complainant and his parents of their interest in the lot. As to why title to the one-third portion sold to Vivencia had not been transferred to the complainant's parents or their heirs, it must be emphasized that this is, first and foremost, the look-out of the transferees, including the complainant himself. It appears that the complainant and his co-heirs have not lifted a finger to pursue their interest in the lot by bringing an action for partition, accounting, and damages. Neither can it be said that Atty. Lagunay was involved in the management of the property during which he prevented his clients from effecting the transfer to Vivencia. On

⁴ Id. at 35-39.

⁵ Id. at 44-51.

⁶ Id. at 5.

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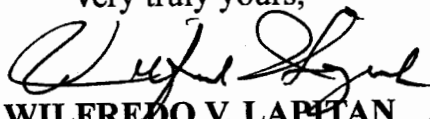
the contrary, he even notarized the Deed of Transfer executed by his clients in 1979 precisely to effect the transfer to Vivencia's heirs. Atty. Lagunay even assisted in having the transfer registered, but unfortunately, the Register of Deeds refused registration because of the five-year prohibition. Even the complainant admitted that this technicality had prevented the transfer to them.

As to Atty. Lagunay's wife, Carollette, signing as an instrumental witness in the subject Deed of Transfer, Section 3(c) of Rule IV of A.M. No. 02-8-13-SC, the 2004 Rules on Notarial Practice, provides that a notary public is disqualified from performing a notarial act if he is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the **principal** within the fourth civil degree. Carollette is not the principal in the said instrument.

On the other hand, Section 4(a) of Rule IV enjoins a notary public from performing any notarial act for any person if he knows or has good reason to believe that the notarial act or transaction is unlawful. Atty. Lagunay notarized a deed of transfer of the subject lot of which was a free patent lot still under the five-year restriction. He is warned that a similar violation of the Notarial Rules will be dealt with more severely.

WHEREFORE, the complaint is **DISMISSED** for lack of merit. Nonetheless, Atty. Urbano H. Lagunay is **STERNLY WARNED** that another similar violation of the Rules on Notarial Practice will be dealt with more severely."

Very truly yours,


WILFREDO V. LAPITAN
 Division Clerk of Court *2/10/15*

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