

THY WILL BE DONE by Atty. Angelo M. Cabrera

Substantial compliance

Last week, I mentioned that our laws on writing wills require substantial compliance with prescribed formalities as outlined in Article 805 of the Civil Code and that one mistake could invalidate not only a provision of the will but the entire will itself.

But what if the mistake involves a simple misstatement of the correct number of pages in the attestation clause? Will that be considered substantial compliance? or, Is it enough ground to invalidate the will?

This is answered in a recent case decided by the Supreme Court.

In said case, the decedent-testator went through the formalities and rigors of will signing, complying with such requirements as having three instrumental witnesses signing the document with him and having the document notarized by a notary public. The instrumental witnesses testified in court that after the decedent-testator read and signed the will on each and every page, they also read and signed the same in the latter's presence and of one another, as required by law. Photographs of the incident were even taken and presented during trial.

The notary public also testified that the decedent-testator had been his client for more than 20 years and that he prepared the will in accordance with the testator's instruction and that before the latter and the attesting witnesses signed it in the presence of one another, he translated the will which was written in English to Filipino and added that the testator was in good health and of sound mind at that time.

However, while the acknowledgment of the will made mention of "7 pages including the page on which the ratification and acknowledgment are written," the will had actually 8 pages including the acknowledgment portion. One of the requirements under Article 805 of the Civil Code provides that, "The attestation shall state the number of pages used upon which the will is written."

Article 809, on the other hand, provides that, "In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805."

The Court said that the law is clear that the attestation must state the number of pages used upon which the will is written. The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages. While Article 809 allows substantial

compliance for defects in the form of the attestation clause, the testator failed in this respect. The statement in the Acknowledgment portion of the subject last will and testament that it "consists of 7 pages including the page on which the ratification and acknowledgment are written" cannot be deemed substantial compliance. The will actually consists of 8 pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of extrinsic evidence.

On this score, the Court mentions the comment of Justice J.B.L. Reyes regarding the application of Article 809, to wit: "x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings."

Thus, the Supreme Court sustained the lower courts' ruling to disallow the will. (GR 189984, Nov. 12, 2012).

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My best wishes go to my former boss, Atty. Rufino R. Rodriguez, who is celebrating his 77th birthday today as I write this. Happy birthday RRR! I greet you with a favorite verse of scripture in 3 John 1:2, "Beloved, I wish above all things that you may prosper and be in health, even as your soul prospers."