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SECOND DIVISION

[A.M. No. P-02-1611. July 31, 2002]

ARTHUR R. CAMAROTE, *complainant, vs.* **PABLO R. GLORIOSO, Deputy Sheriff, Regional Trial Court, Branch 15, Malolos, Bulacan,** *respondent.*

SYNOPSIS

This is a complaint against respondent sheriff for abuse of authority in implementing a writ of execution. Respondent alleged that in implementing the writ, he acted in accordance with the information furnished by one of the defendants in the case, Soon Weon Seo, who stated his address to be at KCW Plastics Corporation, Balagtas, Bulacan, and it was there that he went to enforce the writ of execution. In his reply, complainant denied that the machinery/equipment levied by respondent sheriff were owned by Soon Weon Seo as the same were sold to him by BJ Plastic Corporation. Consequently, the Office of the Court Administrator found respondent guilty of abuse of authority and serious misconduct and recommended that he be fined.

In dismissing the complaint against respondent, the Supreme Court ruled that the duty of the sheriff in enforcing writs of execution is ministerial and not discretionary. However, alleged errors in the levy of properties do not necessarily give rise to liability if circumstances exist showing that erroneous levy was done in good faith. There are certain circumstances in this case which tend to negate complainant's claim that KCW Plastics Corporation, of which he says he is a general manager, is different from CWB Plastic Corporation and that, in levying upon the machinery of KCW Plastics Corporation, respondent abused his authority. In any case, if, as complainant claims, the machinery/equipment levied upon by the sheriff belong to him, complainant's remedy was to file a third-party claim in accordance with Rule 39, Section 16 of the 1997 Rules of Civil Procedure.

SYLLABUS

REMEDIAL LAW; JUDGMENT; EXECUTION OF; PROCEEDINGS WHERE PROPERTY LEVIED ON IS CLAIMED BY ANY

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PERSON OTHER THAN JUDGMENT OBLIGOR OR HIS AGENT, EXPLAINED; CASE AT BAR.— In any case, if, as complainant claims, the machinery/equipment levied upon by the sheriff belong to him, complainant's remedy was to file a third-party claim in accordance with Rule 39, §16 of the 1997 Rules of Civil Procedure which provides in pertinent part: "SEC. 16. *Proceedings where property claimed by third person.* — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefore is filed within one hundred twenty (120) days from the date of the filing of the bond. The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim."

D E C I S I O N

MENDOZA, *J.*:

This is a complaint against respondent Pablo R. Glorioso, Deputy Sheriff, Regional Trial Court, Branch 15, Malolos, Bulacan for abuse of authority in implementing a writ of execution.

In his complaint, dated June 21, 2001, complainant Arthur Camarote alleges:

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1. [I, Arthur R. Camarote,] am the General Manager of KCW Plastics Corporation which is duly organized under the existing laws of the Philippines registered before the Securities and Exchange Commission doing business at the above said address . . . .

2. Sometime on May 31, 2001, our office received a Notice of Execution dated May 31, 2001 and a copy of Writ of Execution dated May 17, 2001 issued by Branch 15 of the Regional Trial Court of Bulacan.

3. Upon verification of the said case, we found out that the case involves *Silver Spirit Plastics Inc. vs. CWB Plastics Corporation, Soon Weon Seo and Mary Ann Denisa* which was docketed as Civil Case No. 483-M-2000 and pending before the Regional Trial Court of Bulacan, Branch 15.

4. Finding that our corporation is not a party to the said case, we referred the matter to our counsel who then on the same day returned the Notice as well as the copy of the Writ of Execution to Sheriff Pablo R. Glorioso of Branch 15 of the Regional Trial Court of Bulacan.

5. In the said letter, Sheriff Pablo R. Glorioso was informed that KCW Plastics Corporation is not a party to the said case. Photocopy of the said letter is hereto attached as Annex "B".

6. On June 14, 2001, Sheriff Pablo R. Glorioso together with Atty. Rosendo G. Tansinsin, Jr., Soon Baek Seo, three (3) policemen of PNP Balagtas, Bulacan as well as several personnel arrived at the gate of our corporation. Thereat, the three (3) policemen together with Sheriff Pablo R. Glorioso and Atty. Rosendo G. Tansinsin, Jr. entered the premises of KCW Plastics Corporation against the will of the officers as well as the duty on guard.

7. Immediately thereafter, Atty. Rosendo G. Tansinsin, Jr. instructed Sheriff Pablo R. Glorioso to levy the machineries that can be found inside the factory and to dismantle the same. I, being the General Manager of KCW Plastics Corporation who was then present[,] called our legal counsel who had a chance to talk to Sheriff Pablo R. Glorioso thru telephone. Upon the instruction of our lawyer, I insisted that our properties should not be levied on the ground that we are not the party to the case. We being a separate corporation with distinct personality from CWB Plastics Corporation or its incorporators the execution of our machineries is illegal.

8. Notwithstanding my insistence, Sheriff Pablo R. Glorioso, upon the instruction of Atty. Rosendo G. Tansinsin, who being a lawyer

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knows fully well that the levy on our properties would be illegal and invalid, levied several of our properties and set the same to be bidded on a public sale on June 21, 2001 at 1:00 o'clock in the [afternoon]. Photocopy of the said Notice of Levy and Notice of Sale is hereto attached as Annex "C".

9. Sheriff Pablo R. Glorioso allowed himself and abused his authority as the Deputy Sheriff of the Regional Trial Court of Bulacan to be used by Soon Baek Seo to harass our corporation it being its competitor in the business.[1]

Respondent denies the foregoing allegations. He contends that, in implementing the writ, he acted in accordance with the information furnished by one of the defendants in the case, Soon Weon Seo, who stated his address to be at "KCW Plastics Corporation, Balagtas, Bulacan," and it was there that he went on June 14, 2001 to enforce the writ of execution. He claims that he and his companions were in fact freely allowed to enter the premises by the guard on duty. Respondent also claims that the machinery/equipment attached by him were covered by a contract to sell executed by BJ Plastic Corporation in favor of said Soon Weon Seo.[2]

In his Reply, complainant denies that the machinery/equipment levied by respondent sheriff were owned by Soon Weon Seo as the same were sold to him on March 29, 2000 by BJ Plastic Corporation. He adds that respondent sheriff is estopped from claiming that the machinery/equipment he attached were owned by Soon Weon Seo because the same were subsequently attached on October 23, 2000 as properties of "KCW Plastics Corporation" in Civil Case No. 692-M-2000, entitled "*Soon Baek Soo v. Soon Weon Seo and/or KCW Plastics Corporation*," of RTC, Branch 14, Malolos, Bulacan, and Atty. Rosendo Tansinsin, Jr., who accompanied respondent sheriff to the premises of KCW Plastics Corporation on June 14, 2001, was also the counsel of Soon Baek Soo in that case. Complainant denied that he allowed respondent to enter the premises of KCW Plastics

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[1] Affidavit-Complaint, pp. 1-2.

[2] Comment, pp. 1-6.

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Corporation on June 14, 2001. In fact, he said he called up his lawyer in order to prevent respondent from attaching the machinery/equipment in the compound.[3]

In its report, the Office of the Court Administrator found respondent sheriff guilty of abuse of authority and serious misconduct and recommended that he be fined ₱5,000.00. The pertinent portion of its report reads:

As gleaned from the records, CW[B corporation] is different from KCW [corporation]. The incorporators of the KCW appearing in the Article[s] of Incorporation registered with the SEC are: Jong Jin Choi, Arturo Camarote, Jasmin Centro, Nelda Apostol and Melba Balana. Soon Weon Seo and Mary Anne Denisa, defendants in Civil Case No. 483-M-2000, are not incorporators of KCW.

Respondent Sheriff levied the properties inside the factory of KCW because, according to him, they are owned by the CW[B] and Soon Weon Seo for it appears in the Special Power of Attorney executed by the latter that his business address is at KCW Plastics Corporation, Balagtas, Bulacan. But before the implementation of the writ of execution, respondent Sheriff was notified by Atty. Villavert on May 31, 2001 that KCW was not a party to Civil Case No. 483-M-2000. Despite said notice, respondent Sheriff implemented the writ of execution and levied the machineries owned by KCW on June 14, 2001.

With the return of the Writ of Execution and Notice of Levy on Execution made by Atty. Villavert to respondent, he was forewarned that the properties inside the KCW are not owned by the judgment debtors. He should have exerted efforts to verify who is the real owner of the properties inside the factory of the KCW. Respondent relied on the Special Power of Attorney executed by Soon Weon Seo that his office address is KCW Plastics Corporation but he has no proof that the machineries inside the factory are owned by CW[B] or by Soon Weon Seo.

On the other hand, complainant submitted the Article[s of Incorporation of KCW and a copy of the Deed of Absolute Sale of the properties dated March 20, 2000 executed by Don Ming Jand and Jae Ho Kim in favor of the complainant. The Deed of Absolute Sale is the conclusive proof that the machineries levied were owned by KCW not by CWP or Soon Weon Seo.

[3] Reply, pp. 1-3.

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[T]he undue haste in implementing the writ of execution on properties not owned by the judgment debtors constitutes abuse of authority and serious misconduct.[4]

The Court finds itself unable to concur in the foregoing findings. To be sure, the duty of a sheriff in enforcing writs of execution is ministerial and not discretionary.[5] However, alleged errors in the levy of properties do not necessarily give rise to liability if circumstances exist showing that the erroneous levy was done in good faith. In Civil Case No. 483-M-2000, the judgment, presumably involving payment of a sum of money, was against CWB Plastics Corporation, Soon Weon Seo, and Mary Ann Denisa. Normally, therefore, the judgment should be executed against their properties.[6] However, there are certain circumstances in this case which tend to negate complainant's claim that KCW Plastics Corporation, of which he says he is general manager, is different from CWB Plastic Corporation and that, in levying upon the machinery of KCW Plastics Corporation, respondent abused his authority. These circumstances suggest a link between KCW Plastics Corporation and Soon Weon Seo, one of the defendants in Civil Case No. 483-M-2000:

(1) On January 12, 2001, Soon Weon Seo executed a Special Power of Attorney in which he stated that his business address was "KCW Plastics Corporation, Balagtas, Bulacan." This is the address of complainant's KCW Plastics Corporation.

(2) The Special Power of Attorney was executed by Soon Weon Seo in favor of Atty. Leo D. Villavert, who is also the counsel of KCW Plastics Corporation in Civil Case No. 692-M-2000, entitled "*Soon Baek Soo v. Soon Weon Seo and/or KCW Plastics Corporation*" of the Regional Trial Court, Branch 14, Malolos, Bulacan.

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[4] Report, pp. 3-4.

[5] *Eduarte v. Ramos*, 238 SCRA 36 (1994).

[6] The records do not disclose the nature of the obligation of CWB Plastics Corporation, Soon Weon Seo, and Mary Ann Denisa.

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(3) Complainant claims ownership over the machinery levied by respondent sheriff by virtue of a Deed of Absolute Sale, dated March 29, 2000, executed in his favor by BJ Plastic Corporation. However, in an affidavit executed sometime before October of the same year, Jae Ho Kim, officer in charge of BJ Plastic Corporation, stated that the real buyer of the machinery was Soon Weon Seo and that BJ Plastic Corporation executed the contract of sale in favor of complainant Camarote at the instance of Soon Weon Seo.[7] It is on the basis of this affidavit that the RTC, Branch 14, Malolos, Bulacan issued a writ of preliminary attachment against KCW Plastics Corporation in Civil Case No. 692-M-2000, entitled "*Soon Baek Soo v. Soon Weon Seo and/or KCW Plastics Corporation.*" Consequently, the machinery/equipment in question were attached by respondent sheriff. The levy was subsequently lifted upon the filing of a counter-bond by KCW Plastics Corporation.

(4) Except for the name of the buyer, the Deed of Absolute Sale executed by BJ Plastic Corporation in favor of complainant Camarote and the Contract to Sell executed by it in favor of Soon Weon Seo, are identical and the lists of machinery sold to each, as appended to the contracts, are the same.

Thus, respondent sheriff had basis for believing that KCW Plastics Corporation and Soon Weon Seo, the judgment debtor in Civil Case No. 483-M-2000, had identical interest in the machinery/equipment levied by him. We cannot say that, in levying on the properties in question to enforce the writ of execution in Civil Case No. 483-M-2000 against Soon Weon Seo, respondent sheriff acted arbitrarily or with grave abuse of authority. Contrary to complainant's claim, the fact that the machinery/equipment in question were subsequently attached by virtue of a writ of preliminary attachment issued by Branch 14 in Civil Case No. 692-M-2000 in which Soon Weon Seo and/or KCW Plastics Corporation are defendants underscores their common interest on the said machinery/equipment.

In any case, if, as complainant claims, the machinery/equipment levied upon by the sheriff belong to him, complainant's remedy was to file a third-party claim in accordance with Rule 39, §16

[7] Comment, Annex D.

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of the 1997 Rules of Civil Procedure which provides in pertinent part:

> SEC. 16. *Proceedings where property claimed by third person.* — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefore is filed within one hundred twenty (120) days from the date of the filing of the bond.
>
> The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

Instead of proceeding against respondent sheriff, complainant should have filed such claim with the trial court which issued the writ of execution. Title to the properties in question may not be settled with finality in such proceedings, but their possession could certainly be restored to complainant if the evidence so warrants.[8]

WHEREFORE, the complaint against respondent Pablo R. Glorioso, Deputy Sheriff, Regional Trial Court, Branch 15, Malolos, Bulacan, is DISMISSED for lack of merit.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and *Corona, JJ.,* concur.

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[8] *Cf. Ong v. Ting*, 149 SCRA 265, 267 (1987).