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interest of his client would be better served if there be a formal withdrawal of his appearance.

WHEREFORE, respondent Agustin T. Dioquino is severely censured. The explanation of Attorney Jonas A. Abellar is accepted but he is admonished to be more attentive in the future as to the current stage of the pleadings bearing on the cases wherein he has entered his appearance. Let copies of this resolution be entered into the records of respondents Jonas A. Abellar and Agustin T. Dioquino.

Barredo, Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. L-38701. June 30, 1975]

BAYER PHILIPPINES INC., BAYER AKTIENGESELLSCHAFT (Formerly Farbenfabriken Bayer Aktiengesellschaft), THE EX-OFICIO SHERIFF OF QUEZON CITY, DEPUTY SHERIFF MARINO V. CACHERO OF QUEZON CITY, AXEL REICHMANN, ATTY. NORBERTO S. GONZALES, and DOMINGO G. FORONDA, *petitioners, vs.* **THE HONORABLE ENRIQUE A. AGANA, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH XXVIII, SAN FRANCISCO OIL & PAINT CO., INC., and ISIDORO GALVANIZED AND STEEL MANUFACTURING CO., INC.,** *respondents.*

[G.R. No. L-38801. June 30, 1975]

SAN FRANCISCO OIL & PAINT CO., INC. and ISIDORO GALVANIZED AND STEEL MANUFACTURING CO., INC., *petitioners, vs.* **BAYER PHILIPPINES,**

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INC., BAYER AKTIENGESELLSCHAFT (Formerly Farbenfabriken Bayer Aktiengesellschaft), THE EX-OFICIO SHERIFF OF QUEZON CITY, DEPUTY SHERIFF MARINO V. CACHERO OF QUEZON CITY, ATTY. NORBERTO S. GONZALES, and THE HONORABLE VICENTE G. ERICTA, As Presiding Judge of Branch XVIII-Quezon City of the Court of First Instance of Rizal, *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; DENIED FOR LACK OF MERIT; CASE AT BAR.— As to the contention of movants that this Court should decide whether or not Bayer Philippines, Inc., et al., as defendants in Civil Case No. Q-18881, were properly served with summons, it is sufficient to state that this question is still pending resolution before the court *a quo*. Until that question is resolved by said court, it would be premature to rule on that question in these cases. Neither does the lifting of the Sheriff's levy render the resolution of the question of ownership and damages over the properties in Civil Case No. Q-18881 moot and academic. It must be recalled that the properties in question were taken by the Sheriff from the premises of the third-party claimants, despite the trial court's restraining order of May 16, 1974 in Civil Case No. Q-18881. This action of the Sheriff was predicated upon Judge Ericta's Order of May 20, 1974 in Civil Case No. Q-14029, directing the Quezon City Sheriff to proceed with the implementation of his Order of May 9, 1974.

RESOLUTION

ANTONIO, *J.:*

The motion for reconsideration of Bayer Philippines, Inc., *et al.* fails to consider that has the *validity* of the Order of respondent Judge dated May 9, 1974 in Civil Case No. Q-14029, which declared that the third-party claimants were "mere conduits" of the judgment-debtor, and, consequently, authorized the Sheriff to break open the gate to the premises at No. 18

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Judge Juan Luna Street, San Francisco del Monte, Quezon City, to bring the properties therein and to sell them at public auction, and adjudicated in effect the ownership of the properties levied by the Sheriff in favor of the judgment-debtor, was necessarily placed in issue by the pleadings in the cases at bar. The thrust of the allegations of petitioners in L-38801 and private respondents in L-38701 was precisely to impugn the authority of said respondent Judge in the proceedings for the execution of the judgment (Civil Case No. Q-14029) to decide the question of ownership over the properties claimed by the third-party claimants, as it is their view that the said question should be resolved in the separate and independent civil action instituted for such purpose by the claimants, pursuant to Section 17 of Rule 39 of the Rules. There is no question that this Order of May 9, 1974 in Civil Case No. Q-14029 is the basis of the Order of respondent Judge dated June 10, 1974 (Annex "B") and of the Sheriff's Notice of Sale dated June 11, 1974 (Annex "C"), which are also sought to be annulled.

Contrary to the claim of movants, the other Orders adverted to which were annulled in the judgment of this Court referred to those issued by respondent Judge in Civil Case No. Q-14029 to implement his Order of May 9, 1974. As to the contention of movants that this Court should decide whether or not Bayer Philippines, Inc., *et al.*, as defendants in Civil Case No. Q-18881, were properly served with summons, it is sufficient to state that this question is still pending resolution before the court *a quo*. Until that question is resolved by said court, it would be premature to rule on that question in these cases.

Neither does the lifting of the Sheriff's levy render the resolution of the question of ownership and damages over the properties in Civil Case No. Q-18881 moot and academic. It must be recalled that the properties in question were taken by the Sheriff from the premises of the third-party claimants, despite the trial court's restraining order of May 16, 1974 in Civil Case No. Q-18881. This action of the Sheriff was predicated upon Judge Ericta's Order of May 20, 1974 in Civil Case No. Q-14029, directing the Quezon City Sheriff to proceed with the implementation of his Order of May 9, 1974. In view of Our

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ruling that Judge Ericta cannot decide the question of ownership in Civil Case No. Q-14029, there is, therefore, no legal basis for said order. In any event, the court *a quo*, in Civil Case No. Q-18881, could still proceed with the trial therein and decide the question of ownership and damages. During the pendency of said case, Bayer Philippines, Inc., *et al.* are not precluded from securing from said court appropriate orders for the protection of their interests.

WHEREFORE, in view of the foregoing, the motion for reconsideration should be, as it is hereby, DENIED for lack of merit.

Fernando, C.J., Barredo, Aquino, and *Concencion Jr., JJ.,* concur.

EN BANC

[G.R. No. L-39046. June 30, 1975]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELANIO ANIN and EDUARDO ANIN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION, REQUISITES. — Where the encounter between the appellants and the victims was unexpected and the crime was not the result of a pre-existing resentment or ill-will on the part of the offenders and there being no proof that accused coolly and serenely deliberated and meditated on their resolution to commit the criminal act, appellants cannot be guilty of murder qualified by evident premeditation; since for this circumstance to be considered to exist, it is necessary to clearly establish, (1) the time when the offender decided to commit the