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jurisdiction of the Tanodbayan for purposes of the Anti-Graft & Corrupt Practices Act.

Otherwise, a major policy of Government, which is to eradicate, or at the very least minimize, the graft and corruption that has permeated the fabric of the public service, like a malignant social cancer, would be seriously undermined. In fact, Section 1 of the Anti-Graft and Corrupt Practices Act seeks to repress not only certain acts of public officers but also of "*private persons* alike, which constitute graft or corrupt practices or which may lead thereto."

WHEREFORE, judgment is hereby rendered setting aside the Tanodbayan Decision, dated March 15, 1985, and its Order of October 7, 1985, and requiring the incumbent Tanodbayan to investigate and act on petitioner's complaint against private respondents Greg Dimaano and Danny Remo.

No costs.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, Paras, and *Feliciano, JJ.*, concur.

EN BANC

[Adm. Matter No. R-252-P. December 12, 1986]

ROMULO G. DINSAY, *complainant, vs.* **LEOPOLDO D. CIOCO and RENATO M. BELLEZA,** *respondents.*

[G.R. No. 71784. December 12, 1986]

ROMULO G. DINSAY and PLANTERS MACHINERY CORPORATION (PLAMACOR), *petitioners, vs.* **THE**

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HONORABLE JUDGE ROMEO J. HIBIONADA and TRADERS ROYAL BANK, *respondents.*

[G.R. No. 75113. December 12, 1986]

LEOPOLDO D. CIOCO and RENATO M. BELLEZA, *petitioners, vs.* **THE HONORABLE SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. **SUPREME COURT; ADMINISTRATIVE SUPERVISION OF COURT PERSONNEL; SHERIFF; WHEN LIABLE FOR GRAVE MISCONDUCT.**— On the fact alone of the substitution by the SHERIFFS of page 4 of the original certificate of sale, that is, taking no account of the reasons or motivation on their part, the mere substitution made was a very serious step in the preparation and archiving of official papers, involving the performance of official duties and affecting public interest. The SHERIFFS, therefore, must be held administratively liable and meted out the penalty of dismissal for grave misconduct highly prejudicial to the service.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRESCRIPTION OF ACTIONS; ACTION FOR ANNULMENT OF DEED OF SALE BASED ON FRAUD SHOULD BE FILED WITHIN FOUR (4) YEARS FROM DISCOVERY OF FRAUD.**— In *Villanueva vs. Villanueva,* 91 Phil. 43 (1952), where a vendee sought rescission and annulment of two Deeds of Sale on the ground of fraud on the part of the seller, it was held that the action should be filed within four (4) years after discovery of the fraud. Similarly, if the MORTGAGEE, upon discovery of PLAMACO's fraud, had sought rescission and annulment of the mortgage as well as recovery of the amounts released to PLAMACO on the basic of the mortgage, its action should be filed within four (4) years after discovery of the fraud.

3. **ID.; ID.; ID.; FAILURE OF BANK TO TAKE ACTION BASED ON ALLEGED FRAUD; WRIT OF PRELIMINARY ATTACHMENT CANNOT BE ISSUED; CASE AT BAR.**— "A person cannot claim the rights of an innocent purchaser who wilfully close his eyes to facts which would be sufficient to

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arouse the suspicion of a reasonable person; and knowledge of what might have been revealed by proper inquiry is imputable to the purchaser." The mortgage was allegedly executed on March 26, 1980. It should not have been difficult for the BACOLOD COURT to have realized that the MORTGAGEE, as a BANK, could not have failed to see that no ricemill stood on Lot 1043-C at the time the mortgage was accepted as collateral. Banks usually appraise properties before extending any loan. The point is that if the Bank took no action based on the alleged fraud within four (4) years after March 26, 1980, it should ordinarily not be entitled to a Writ of Preliminary Attachment based on that fraud when its Complaint was filed only on June 1, 1984.

4. **REMEDIAL LAW; COURTS; HAVE DISCRETION EITHER TO REFUSE TO ISSUE OR RECALL ORDER OF PRELIMINARY ATTACHMENT.**— The BACOLOD COURT could have realized that the case would then have to be decided, not only on the alleged fraud committed on March 26, 1980, but also on whether or not Annex "P" of the complaint was a valid certificate of sale. The alleged fraud would be only an incident. It should have been the better exercise of discretion on the part of the BACOLOD COURT if it had refused to issue the Order of Preliminary Attachment, or to recall it after the allegation was clearly made that the certificate of sale, depended upon by the MORTGAGEE, was questionable.

5. **ID.; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; ELEMENTS.**— A prejudicial question is one "x x x based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused." Section 5, Rule III, of the 1985 Rules on Criminal Procedure prescribes the elements of a prejudicial question thus: "SEC. 5. Elements of prejudicial question. — The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed."

6. **ID.; ID.; ID.; ID.; JUDGMENT IN ADMINISTRATIVE CASES, NOT A PREJUDICIAL QUESTION.**— The ADMINISTRATIVE CASE is not a prejudicial question. The issue in the ADMINISTRATIVE CASE is whether the SHERIFFS, by their act of substituting page 4, committed gross dishonesty and/or

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grave misconduct. The issue in the FALSIFICATION CASE is whether or not the SHERIFFS had unlawfully and feloniously made an alteration or intercalation in a genuine documemt which changes its meaning in violation of Article 171 (6) of the Revised Penal Code. A finding of grave misconduct in the Administrative case would not be determinative of the guilt or innocence of the SHERIFFS in the FALSIFICATION CASE. The DEFICIENCY JUDGMENT CASE is neither a prejudicial question to the FALSIFICATION CASE. The main issue involved in the former is the amount of the highest bid at which the auction properties were sold in order to determine whether or not a deficiency exists. The BACOLOD COURT will have to sustain either the original certificate of sale or the certificate of sale with the substituted page 4, In either possibility, the ruling will not be determinative of the guilt or innocence of the SHERIFFS in the FALSIFICATION CASE. In other words, in the SANDIGANBAYAN rests the determination of whether or not the act of substitution by the SHERIFFS, a fact admitted by them but which they allege was done in good faith, should be considered a felony upon a finding of criminal intent. That issue is not involved, nor will it be resolved, either in the ADMINISTRATIVE CASE or in the DEFICIENCY JUDGMENT CASE.

D E C I S I O N

PER CURIAM:

The persons and entities in these three cases are:

(1) Traders Royal Bank (the MORTGAGEE or BANK, for short);

(2) Planters Machinery Corporation (PLAMACO), inclusive of its President Romulo G. DINSAY, et al. (the MORTGAGORS, for short);

(3) Leopoldo D. CIOCO, Clerk of the Metropolitan Trial Court and *Ex-Oficio* City Sheriff of Bacolod, and Renato M. BELLEZA, Deputy Sheriff of Bacolod (the SHERIFFS, for short);

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(4) The SANDIGANBAYAN; and

(5) 6th Region RTC Branch 48 (the BACOLOD COURT, for short).

The three cases are:

G.R. No. 71784. — *Certiorari* proceedings questioning a writ of attachment issued by the BACOLOD COURT in a case for deficiency judgment filed by the MORTGAGEE against the MORTGAGORS (the DEFICIENCY JUDGMENT CASE, for short).

AM No. R-252-P. — Complaint filed by DINSAY with this Court for administrative action against the SHERIFFS (the ADMINISTRATIVE CASE, for short); and

G.R. No. 75113. — *Certiorari* proceedings questioning the refusal of the SANDIGANBAYAN to suspend proceedings against the SHERIFFS for falsification of public document (the FALSIFICATION CASE, for short), on the ground that the DEFICIENCY JUDGMENT CASE and the ADMINISTRATIVE CASE involve prejudicial questions.

The three cases are interrelated and can be decided jointly, but there will be no finding of fact in this Decision which should be considered as binding on the SANDIGANBAYAN and on the BACOLOD COURT in connection with the cases before them.

The relevant factual background may be briefly stated:

In 1980, certain properties of the MORTGAGORS were mortgaged to the BANK to secure credits extended to PLAMACO. Upon request of the MORTGAGEE for extra-judicial foreclosure, the SHERIFFS, on March 8, 1984, sold the mortgaged properties to the MORTGAGEE, as the sole bidder, for P3,263,182.67. On the same date, the SHERIFFS executed a Deed of Sale which was notarized on the same date by Judge Vivencio T. Ibrado of the Metropolitan Trial Court of Bacolod. It was in page 4 of the certificate of sale, signed by CIOCO, where it was stated that the bid price was P3,263,182.67.

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Shortly thereafter, or on June 1, 1984, the MORTGAGEE instituted the DEFICIENCY JUDGMENT CASE against the MORTGAGORS alleging that what PLAMACO had owed was P1,739,700.00, exclusive of interest and other bank charges, and that the foreclosed properties were purchased by the BANK only for P730,000.00.

On October 29, 1984, DINSAY instituted the ADMINISTRATIVE CASE against the SHERIFFS, alleging that they had changed page 4 of the original certificate of sale with another page 4, wherein the bid price was stated to be P730,000.00.

On August 10, 1985, the FALSIFICATION CASE was instituted against the SHERIFFS before the SANDIGANBAYAN.

THE ADMINISTRATIVE CASE

The complaint against the SHERIFFS for "gross dishonesty and grave misconduct" was endorsed to Judge Alfonso B. Baguio, Executive Judge of the BACOLOD COURT for investigation.

CIOCO claims that the substitution was solely the act of BELLEZA; that the former's act of signing the original page 4 as well as the substituted one was purely ministerial on his part; and that there was a valid change because of the amended bid submitted by the BANK late in the afternoon of March 8, 1984 to reflect the true intention of the bidder.

BELLEZA contends that he conducted the auction sale on March 8, 1984; that at 9:00 A.M., the BANK submitted a bid price of P3,263,182.67 although he does not know who received the same; that at 2:30 P.M., the BANK submitted an amended bid of P730,000.00, which he himself received, on the ground that the original bid was "inadvertently overstated"; that he then re-typed page 4 to reflect the reduced bid, submitted it to CIOCO for signature, and then substituted the original page 4 with another page containing the amended bid; that at 4:30 P.M., he (BELLEZA) submitted the amended certificate of sale to Judge Ibrado for notarization but that through inadvertence

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he was unable to substitute the original page 4 with the amended page 4; and that he had acted in good faith.

However, Antonia Resujento, an employee of the Metropolitan Trial Court, and one of the witnesses to the certificate of sale testified that it was she who was asked by BELLEZA to re-type page 4 of the original certificate of sale about the third week of April, 1984 by substituting P730,000.00 for the original P3,263,182.67, after which she was asked to sign as a witness. On the other hand, Eufemia Claridad, also an employee of the Metropolitan Trial Court and a witness to the Certificate of Sale, testified that she signed the revised page 4 in the afternoon of March 8, 1984 upon instructions of BELLEZA.

The Investigating Judge concluded that "although it is believed that the change of the consideration in the certificate of sale from over 3 million pesos to P730,000.00 may have some basis, yet, the procedure done by the respondents in making the change was without legal basis, since "considering that it was already a complete public document by itself, any change made on said document is no longer proper." According to him, the basis for the change of consideration was the BANK's claim that the MORTGAGORS had committed misrepresentations in their loan application, which the MORTGAGORS did not rebut. He then found the SHERIFFS "guilty of substituting page four (4) of the certificate of sale" and recommended suspension for a period of three (3) months, without pay.

The Court Administrator, however, observing that the recommended penalty was not in accord with the penalty for the offense of grave misconduct, recommended, instead, suspension from office for one (1) year, without pay.

In so far as the ADMINISTRATIVE CASE is concerned, our review of the testimonial and documentary evidence presented before the investigating Judge convinces us that the substitution was not done on the same day of March 8, 1984, but sometime in April, 1984, upon the following considerations:

1. The substituted page 4 did not bear the imprint of the notarial seal in contrast to the original page 4 which did, together

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with pages 1, 2, 3 and 5. That BELLEZA failed to submit the substituted page 4 for notarization through "inadvertence" is a lame excuse.

2. Judge Ibrado testified that he had notarized only one Certificate of Sale with a stated bid of P3,263,182.67, which was submitted by CIOCO to the Regional Trial Court on April 11, 1984, specifically, to Rodegelio Cortez who was in charge of Notarial Reports.[1] The records show, however, that the amended bid was submitted to the Office of the Register of Deeds for registration only on May 21, 1984.

3. As the NBI had stated in its evaluation comment dated January 15, 1985:

> "10. If it were true that the letter of the TRB amending the bid price from P3,263,182.67 to P730,000.00 on the ground that the bid price was inadvertently overstated, was received by the Office of the City Sheriff on 8 March 1984, then there is no need for the Sheriff of Bacolod to prepare and execute a Certificate of Sale on the auctioned properties in the amount of P3,263,182.67 because the overstated bid price was accordingly amended by the second letter which was received on the very day of the auction sale."

4. The testimony of Antonia Resujento is more worthy of credence than that of Eufemia Claridad, who is a first cousin of CIOCO, and can be biased.

5. Apart from that, the testimony of Antonia Resujento that the substitution was made sometime in April 1984 is indirectly supported by the testimony of Margarito Magbanua, a Civil and Geodetic Engineer, who declared that in April, 1984 he was commissioned by the BANK to conduct an actual survey of the mortgaged properties to determine the relative position of one of the lots in relation to the provincial road and the national highway, as well as the location of the ricemill. It was then that the BANK must have become aware that the

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[1] T.s.n., March 29, 1985, p. 6.

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MORTGAGORS had committed misrepresentations in their loan application relative to the improvements on and the location of the mortgaged properties. As testified to by Benigno Tingson, Jr., the BANK's appraiser, "*after the resurvey*, it appeared that the ricemill is situated in the other lot which was omitted in the original parcellary plan."[2]

Ramon H. Coscolluela, the BANK's Branch Manager testified that he was instructed by the Manila Office in the morning of March 8, 1984 to verify the mortgaged properties and to file an amendment before the end of the auction sale that same day. Yet, the necessary verification could not have been made in a matter of hours, as, in fact, it needed a survey by a geodetic engineer Margarito Magbanua.[3] Further, while Ramon Coscolluela signed the original bid on a plain piece of paper, the amended bid was in the BANK's stationery, carried his typewritten name but with a materially different signature. According to Coscolluela, he authorized the Assistant Manager, Nick Encarnacion, to sign the same as he had to leave the office. The latter, however, did not even sign "by." The amended letter-bid is also stamp-marked "RECEIVED, Office of the City Sheriff, 3-8-84 by R. Belleza," but which stamp appears nowhere in the original bid, thereby indicating a deliberate attempt to make it appear that the amended bid was submitted on the same day of March 8, 1984.

On the fact alone of the substitution by the SHERIFFS of page 4 of the original certificate of sale, that is, taking no account of the reasons or motivation on their part, the mere substitution made was a very serious step in the preparation and archiving of official papers, involving the performance of official duties and affecting public interest. The SHERIFFS, therefore, must be held administratively liable and meted out the penalty of dismissal for grave misconduct highly prejudicial to the service.

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[2] T.s.n., June 5, 1986, in C.C. No. 2931.

[3] Annex "3", Comment of the Bank in G.R. No. 71784.

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THE DEFICIENCY JUDGMENT CASE

The BACOLOD COURT issued its Preliminary Attachment mainly on the ground of fraud. Said the Court:

"*From the evidence gathered, it is the finding of the court that defendant Romulo Dinsay fraudulently contracted the obligation by misrepresenting to plaintiff that a ricemill stands on Lot 1043-C.* This took place at the inception of the transaction. With this misrepresentation, plaintiff was made to believe on the soundness of the collateral and that precipitated the higher valuation of the collaterals. One of the grounds for the issuance of the writ of preliminary attachment is when the defendant has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought (Rule 57, Sec. 1[d])."

DINSAY elevated the case to us on *Certiorari* challenging that Order. On September 11, 1985, we issued a Temporary Restraining Order enjoining the enforcement of the Writ of Attachment, and on December 4, 1985, we gave due course to the Petition.

In *Villanueva vs. Villanueva*, 91 Phil. 43 (1952), where a vendee sought rescission and annulment of two Deeds of Sale on the ground of fraud on the part of the seller, it was held that the action should be filed within four (4) years after discovery of the fraud. Similarly, if the MORTGAGEE, upon discovery of PLAMACO's fraud, had sought rescission and annulment of the mortgage as well as recovery of the amounts released to PLAMACO on the basis of the mortgage, its action should be filed within four (4) years after discovery of the fraud. In *Emas vs. De Zuzuarregui and Aguilar*, 53 Phil. pp. 203, 204 (1929) the following was said:

"A person cannot claim the rights of an innocent purchaser who wilfully closes his eyes to facts which would be sufficient to arouse the suspicion of a reasonable person; and knowledge of what might have been revealed by proper inquiry is imputable to the purchaser."

The mortgage was allegedly executed on March 26, 1980. It should not have been difficult for the BACOLOD COURT to have realized that the MORTGAGEE, as a BANK, could

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not have failed to see that no ricemill stood on Lot 1043-C at the time the mortgage was accepted as a collateral. Banks usually appraise properties before extending any loan. The point is that if the BANK took no action based on the alleged fraud within four (4) years after March 26, 1980, it should ordinarily not be entitled to a Writ of Preliminary Attachment based on that fraud when its Complaint was filed only on June 1, 1984.

To the Complaint of the BANK was attached an Annex "P". That must have been the certificate of sale with the re-written page 4. In the Answer of the MORTGAGORS filed on June 18, 1984, they had already denied the authenticity of Annex "P" of the Complaint. They also attached to their Answer a copy of the Information filed against the SHERIFFS for falsification of public documents in regards to the certificate of sale attached to the Complaint. The BACOLOD COURT could have realized that the case would then have to be decided, not only on the alleged fraud committed on March 26, 1980, but also on whether or not Annex "P" of the complaint was a valid certificate of sale. The alleged fraud would be only an incident.

All told, it should have been the better exercise of discretion on the part of the BACOLOD COURT if it had refused to issue the Order of Preliminary Attachment, or to recall it after the allegation was clearly made that the certification of sale, depended upon by the MORTGAGEE, was questionable.

THE FALSIFICATION CASE

Preliminarily, it may be stated that the National Bureau of Investigation (NBI) in its evaluation comment dated January 15, 1985,[4] and the 4th Assistant Fiscal of Bacolod City, as deputized Tanodbayan Prosecutor, in a Resolution dated July 19, 1985,[5] separately recommended the filing of a falsification charge against the SHERIFFS based on *prima facie* evidence.

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[4] *Rollo*, p. 119, A.M. No. 252-P.

[5] *ibid.*, pp. 93-101, G.R. No. 71784.

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The issue poised is whether the ADMINISTRATIVE CASE and the DEFICIENCY JUDGMENT CASE constitute prejudicial questions to the FALSIFICATION CASE that would warrant the suspension of the proceedings in the latter case. The SANDIGANBAYAN held in the negative, hence, this Petition for *Certiorari*, which, on July 24, 1986, we dismissed for lack of merit. The SHERIFFS have moved for reconsideration.

A prejudicial question is one "x x x based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused."[6]

Section 5, Rule 111, of the 1985 Rules on Criminal Procedure prescribes the elements of a prejudicial question thus:

"SEC. 5. Elements of prejudicial question. — The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed."

The ADMINISTRATIVE CASE is not a prejudicial question.[7] The issue in the ADMINISTRATIVE CASE is whether the SHERIFFS, by their act of substituting page 4, committed gross dishonesty and/or grave misconduct. The issue in the FALSIFICATION CASE is whether or not the SHERIFFS had unlawfully and feloniously made an alteration or intercalation in a genuine document which changes its meaning in violation of Article 171(o) of the Revised Penal Code. A finding of grave misconduct in the ADMINISTRATIVE CASE would not be determinative of the guilt or innocence of the SHERIFFS in the FALSIFICATION CASE.

The DEFICIENCY JUDGMENT CASE is neither a prejudicial question to the FALSIFICATION CASE. The main issue involved in the former is the amount of the highest bid at which the auctioned properties were sold in order to determine whether or not a deficiency exists. The BACOLOD COURT will have

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[6] *Mendiola vs. Macadaeg*, 1 SCRA 593 (1961).

[7] *Flordelis vs. Castillo*, 58 SCRA 301 (1974).

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to sustain either the original certificate of sale or the certificate of sale with the substituted page 4. In either possibility, the ruling will not be determinative of the guilt or innocence of the SHERIFFS in the FALSIFICATION CASE.

In other words, in the Sandiganbayan rests the determination of whether or not the act of substitution by the SHERIFFS, a fact admitted by them but which they allege was done in good faith, should be considered a felony upon a finding of criminal intent. That issue is not involved, nor will it be resolved, either in the ADMINISTRATIVE CASE or in the DEFICIENCY JUDGMENT CASE.

WHEREFORE, judgment is hereby rendered:

1. In G.R. No. 71784, setting aside the Order, dated July 11, 1984, and the Writ of Preliminary Attachment, dated July 16, 1984, issued in Civil Case No. 2931 of the Regional Trial Court of Negros Occidental, Branch 48, of Bacolod City; and making permanent the Temporary Restraining Order heretofore issued.

2. In AM No. R-252-P, dismissing from the service City Sheriff Leopoldo D. Cioco and Deputy Sheriff Renato M. Belleza, both of Bacolod City, with forfeiture of full retirement benefits and pay in respect of Renato M. Belleza, but only a forfeiture equivalent to one year retirement benefits and pay as to Leopoldo D. Cioco; and as to both of them, with prejudice to reinstatement in any branch of the government or any of its agencies or instrumentalities; and

3. In G.R. No. 75113, denying the Motion for Reconsideration of the Resolution of this Court, dated July 24, 1986, which dismissed the Petition for *Certiorari* for lack of merit.

This Decision is immediately executory.

Without costs in all three cases.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, and *Feliciano, JJ.*, concur.

Alampay, J., no part.