Supreme Court E-Library

By:

(SGD.) PATRICIA GRACE A. GUSTILO
Attorney-in-Fact

(SGD.) ANNIE LAZARO
Respondent-Appellee

(SGD.) GORGONIA LEDESMA
Respondent-Appellee

(SGD.) JOEL G. MARTINEZ
Counsel for Respondents-Appellee

(*Rollo*, pp. 13-15)

WHEREFORE, the aforequoted Compromise Agreement being not contrary to law, good morals, public order or public policy, is hereby *APPROVED* and the parties are hereby enjoined to comply with its terms and conditions. The Resolution of the NLRC dated January 19, 1999, and the Decision of the Court of Appeals in CA-G.R. No. 52788, dated May 24, 2000 are set aside; and this case is hereby declared *CLOSED AND TERMINATED*.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *De Leon, Jr., JJ.*, concur.

FIRST DIVISION

[A.M. Nos. P-93-990 & A.M. No. P-94-1042. September 8, 2000]

TERESITO D. FRANCISCO, *complainant, vs.* **FERNANDO CRUZ, Deputy Sheriff, Branch 171, Regional Trial Court, Valenzuela**, *respondent.*

SYNOPSIS

In an administrative complaint filed by Teresito D. Francisco, Deputy Sheriff Fernando Cruz of the Regional Trial Court of

Supreme Court E-Library

Valenzuela, Metro Manila,was charged with violation of Rule 39 of the Rules of Court and the Anti-Graft and Corrupt Practices Act. According to complainant Francisco, respondent sheriff immediately levied on their house and lot, despite the fact that he has other personal properties that are more than enough to satisfy the money judgment rendered against him. Complainant likewise alleged that in conspiracy with the plaintiffs, respondent caused the auction sale of said realty without posting any notice of sale as required by the Rules of Court.

Respondent cannot be faulted for his acts of immediately proceeding against the real property of complainant without first exhausting his personal property. The writ of execution was served on complainant's wife but the latter refused to receive the same and did not allow respondent to enter the house. He cannot, without the consent of the owner of the house, enter the same without rendering himself liable as trespasser. As to the lack of posting of the notice of auction sale, the fact alone that there was no certificate of posting attached to the sheriff s record of the execution sale is not sufficient to prove the lack of posting. Complainant had the *onus* to present evidence that respondent sheriff failed to comply with the posting requirement of the law.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIONS; COMPLAINANT'S EXERCISE OF THE RIGHT OF REDEMPTION, AN IMPLIED ADMISSION OF THE REGULARITY OF THE EXECUTION SALE.** — The act of complainant and his wife in exercising the right of redemption, despite the lapse of the period of redemption, is an implied admission of the regularity and validity of the execution sale.

2. **ID.; EVIDENCE; PRESUMPTION OF REGULAR PERFORMANCE OF DUTY; IN THE ABSENCE OF CONTRARY EVIDENCE, THE PRESUMPTION THAT THE SHERIFF HAS PERFORMED HIS REGULAR DUTY PREVAILS.** — As to the lack of posting of the notice of auction sale, the fact alone that there was no certificate of posting attached to the sheriff's record of the execution sale is not sufficient to prove the lack of posting. Complainant had the *onus* to present evidence that respondent

Supreme Court E-Library

sheriff failed to comply with the posting requirement of the law. In the absence of contrary evidence, as in these cases, the presumption prevails that the sheriff has performed his official duty.

3. ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; REASONABLE DILIGENCE IS ALL THAT IS REQUIRED OF A SHERIFF IN MAKING A LEVY. — Respondent cannot be faulted for his acts of immediately proceeding against the real property of complainant without exhausting first his personal property. The records show that the writ of execution was served on complainant's wife on 16 January 1990 but the latter refused to receive the same and did not allow respondent to enter the house. He cannot, without the consent, express or implied, of the owner of the house, enter the same and attach the personal property therein, without rendering himself liable as trespasser. Reasonable diligence is all that is required of a sheriff in making a levy, and that the question as to what constitutes such diligence depends upon the particular facts, in connection with the duty involved. An officer must perform his duties in the service of the writ without exercising unnecessary violence, or subjecting the persons on whose premises he enters to indignities.

RESOLUTION

DAVIDE, JR., *C. J.*:

Two cases were filed by complainant against respondent Deputy Sheriff Fernando Cruz of Branch 117 of the Regional Trial Court of Valenzuela (now Valenzuela City), Metro Manila. The first, A.M. No. P-93-990, was referred on 26 January 1994 for investigation, report and recommendation to Atty. Jose P. Perez, then Chief of the Reporter's Office, now Assistant Court Administrator[1]

The second case, A.M. No. P-94-1042 (formerly OMB-0-93-0627), was ordered consolidated with A.M. No. P-93-990[2]

[1] *Rollo* I , 49.

[2] *Rollo* III , 4.

Supreme Court E-Library

in our resolution of 29 June 1994. The records of both cases were transmitted to Atty. Perez who started to conduct the investigation.

It would appear that, as stated in the Motion to Dismiss filed on 2 June 1999 by respondent, the investigation was suspended in view of an alleged prejudicial question, namely, the outcome of the case filed by complainant before the Regional Trial Court of Valenzuela City entitled *Sps. Teresito Francisco and Rosana Francisco vs. Ma. Luisa Lacorte and Fernando Cruz,* docketed as Civil Case No. 4353-V-94 (erroneously referred to as 4353-V-93 in the Motion to Dismiss dated 7 July 1994).

In the Resolution of 25 October 1999 we referred these cases to the Court Administrator for evaluation, report and recommendation on the basis of the pleadings already filed.

In his Memorandum of 31 July 2000, Court Administrator Alfredo L. Benipayo makes the following findings and evaluation:

In his sworn complaint dated September 4, 1993 and June 1993, docketed by this Court as A.M. No. P-93-990 and A.M. No. P-94-1042 respectively, Teresito D. Francisco charges Deputy Sheriff Fernando Cruz, RTC, Branch 171, Valenzuela with violation of Sections 8 and 18, Rule 39 of the Rules of Court and the Anti-Graft and Corrupt Practices Act (RA No. 3019) relative to Civil Case No. 3156-V-89 entitled "*Maria Luisa Lacorte et al. vs. Sps. Rosana and Teresito Francisco,*" for collection of sum of money.

Complainant who is defendant in the aforecited civil case, alleges that on November 20 1989 a money judgment was rendered by the RTC, Branch 171, Valenzuela in Civil Case No. 3156-V-89 ordering him and his wife to pay the plaintiffs therein the total amount of P129,196.00. On January 16, 1990, a writ of execution was issued by the clerk of court. The following day, January 17, 1990, respondent sheriff in violation of Section 8, Rule 39 of the Rules of Court immediately levied on their house and lot with TCT No. 50532, despite the fact that they have other personal properties that are more than enough to satisfy the money judgment. Then, in conspiracy with the plaintiffs, said respondent caused the auction sale of said realty on February 20, 1990 without posting any notice of sale as required by Section 1, Rule 39 of the Rules of Court. On February 23, 1990, a certificate of sale was issued in favor of the said plaintiffs.

Supreme Court E-Library

Complainant further alleges that on January 14, 1993, plaintiffs Lacorte and Iñigo filed a petition entitled "*Luisa Lacorte and Elizabeth Iñigo vs. Sps. Teresito Francisco and Rosana Francisco,*" for recovery of possession of the very same house and lot subject of the auction sale in Civil Case No. 3156-V-89 and docketed as (AD) Case No. 976-V-93. He and his wife opposed the petition by saying that as early as December 17, 1992 they have already deposited in court a manager's check payable to the plaintiffs in satisfaction of the money judgment in Civil Case No. 3156-V-89.

When asked to comment, respondent denied the charges.

Respondent narrates that on January 17, 1990, he levied the real property of the complainant and his wife described by TCT No. 50532 of the Register of Deeds of Caloocan City. He argues that since the decision sought to be implemented is a money judgment, the rule to follow is Section 15, Rule 39 of the Rules of Court. He seems to suggest that by virtue of the said rule he may proceed with any and all of judgment debtor's properties be they real or personal. Thereafter, he prepared the corresponding notice of sale and personally served the same upon complainant's wife. He likewise caused the posting of the notice of execution sale and caused the same to be published in a newspaper of general circulation as evidenced by an affidavit of publication (Annex "4", *Rollo,* p. 31). During the public auction on February 20, 1990, the judgment creditors were allegedly adjudged as the highest bidders and as such, a certificate of sale (Annex "5", *Rollo*, p. 32) was issued in their favor. He maintains that all the appropriate procedures were followed by him except that, through inadvertence, he failed to prepare the corresponding sheriff's report and/or return with respect to the posting of notices.

Respondent maintains that he could not have conspired with the judgment creditors since a close look at the annotations of TCT No. 50532 of the Register of Deeds of Caloocan City will show that while the certificate of sale was issued on February 20, 1990 the same was registered only on January 20, 1991 owing to the pleas of the judgment debtors that they be given time to pay their monetary obligations. As such, the judgment debtors were able to stop the running of the 1-year period of redemption by eleven (11) months.

During the (course of the) investigation conducted by Atty. Jose P. Perez pursuant to the Honorable Court's resolution dated January 26, 1994, it was established that herein complainant and his wife failed to redeem the subject house and lot within the one year redemption period, as a consequence of which the judgment creditors had already

Supreme Court E-Library

consolidated their ownership over the subject property. To obtain possession thereof, the judgment creditors filed (AD) Case No. 976-V-93 entitled "*Luisa Lacorte and Elizabeth Iñigo vs. Teresito Francisco and Rosana Francisco*" for recovery of possession. Herein complainant and his wife, on the other hand, filed Civil Case No. 4353-V-93 entitled "*Sps. Teresito Francisco and Rosana Francisco vs. Ma. Luisa Lacorte and Elizabeth Iñigo*" for Nullification of Title, *etc.* In the case for nullification of title, complainant questions the validity of the auction sale. Apparently, the issues thereon involve the very same issues as in the instant administrative case.

On July 7, 1994, respondent filed a Motion to Dismiss contending that the instant case is premature in view of the pendency of (AD) Case No. 976-V-93 and Civil Case No. 4353-V-93.

On June 1, 1999, respondent once again filed a motion to dismiss informing the Court that an Order dated March 24, 1999 was already issued by the RTC, Branch 75, Valenzuela City dismissing (AD) Case No. 976-V-93 and Civil Case No. 4353-V-93, hence, the instant complaint should likewise be dismissed. Said order is hereinafter quoted, thus:

"ORDER

A perusal of the records of this case would show that, it has been tried together with Civil Case No. 3156-V-89 which is a money suit filed by plaintiff Ma. Luisa Lacorte and Elizabeth Iñigo on July 24, 1989 against the defendant spouses Rosana Francisco and Teresito Francisco, plaintiffs in the herein case, wherein a decision was rendered by the then Executive Judge Adriano R. Osorio who handled the said case, as early as November 20, 1989 in favor of the plaintiffs of said case, and AD Case No. 976-V-93 for a writ of possession which was filed before Branch 172 filed by the petitioners Ma. Luisa Lacorte and Elizabeth Iñigo which appears to be an after effect of the decision rendered in Civil Case No. 3156-V-89, which both cases were transferred to this Court to be consolidated with the herein case.

As borne out from the records of this case, would show that pre-trial was terminated, considering that the possibility of a settlement of the civil aspect was remote, and the plaintiff was ordered to present its evidence. But, for failure of the plaintiffs to present its evidence, their right to present the same was deemed waived. For this reason, for failure of the plaintiffs to prosecute, this case is hereby ordered DISMISSED.

Supreme Court E-Library

SO ORDERED.

Valenzuela City, March 24, 1999."

After a careful study of the entire records of the case, we are of the opinion that complainant resorted to the filing of the instant administrative complaint primarily to obtain declaration from this Honorable Court of respondent sheriff's alleged violation of certain rules in the conduct of the auction sale with the end in view of using such declaration in the civil case for nullification of title. This opinion finds basis in the statement of Atty. Eduardo Santos, counsel for the complainant as well as in the observation of Atty. Jose P. Perez during the investigation hearing conducted last May 24, 1994 (TSN, pages 108-109), to wit:

"ATTY. SANTOS:

> As a matter of fact, this Honorable Investigator could see, he see it, from the very comments, Exhibit "B", of respondent that he himself did not mention about making any posting in that comment like this Honorable Court why we do not like to widen this so much to assail the integrity of the respondent. We would like to make of record that the very evidence are supreme including his testimony in Court. *And this Honorable Court, the Supreme Court, we have a better say on the matter than the trial court because there are so many, many outside influences in the trial courts. We are sorry to state so. That will defect the genuine decision on the issue which only the Supreme Court could determine.* (iTALICS ours)

ATTY. PEREZ:

> That is it. You see. You admit that the central issue is whether or not the respondent sheriff followed the requirements of the rules in the matter of auction sale. That is the central issue in the administrative case and in the civil case. You said that and I thank you for that, that the Supreme Court would be in a better position to rule on that issue but that will come in appeals from these cases, not at this stage where it is still being tried at the First Instance. Since we are putting the cart before the horse, the matter

Supreme Court E-Library

> of whether or not the sheriff in fact followed the Rules of Court in the conduct of the auction sale is pending litigation. There is no decision as yet by the trial courts. But here, we are trying the Sheriff on the same allegation that he did not post the notice as required by the Rules of Court. What if I decide another way. This is my predicament."

Falling to obtain the desired declaration from this Court, both (AD) Case No. 976-V-93 and Civil Case No. 4353-Y-94 did not prosper quite predictably for failure of complainant and his wife to present evidence.

Complainant herein claims that respondent sheriff erred in levying on their real properties without first proceeding against their personal properties. He further claims that there was no posting of notices of auction sale nor was there service of the writ of execution upon him and his wife. The issues were the very same issues raised before the lower court in the aforementioned civil cases. Considering that said cases did not prosper, the instant administrative complaint should likewise fail. Nevertheless, with respect to the respondent's admission that although he implemented the questioned writ of execution according to its mandate and in consonance with the rules, he however through inadvertence failed to prepare the corresponding sheriff's return with respect to the posting of notices, this should not be countenanced. There is neglect in the performance of his duty if the sheriff fails to submit his report on time to the court (*San Jose vs. Centeno*, 245 SCRA 297, June 23, 1995)

Needless to state, the image of a Court of Justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice (*Recto vs. Racelis*, 70 SCRA 438 [1976]). Everyone therefore is enjoined to act with propriety and decorum and must, at all time, be beyond suspicion. This Court will not countenance any act that falls short of such rigid standard (*San Jose vs. Centeno,* 245 SCRA 297, June 23, 1995).

The Court Administrator then recommends that respondent deputy sheriff be made to pay a fine of ₱5,000 and sternly warned that the repetition of the same or similar act in the future will be dealt with more severely.

Supreme Court E-Library

The Court finds that, except for the requisite sheriff's return, there was no impropriety on the part of respondent sheriff in implementing the writ of execution issued by the trial court.

To begin with, the civil action for annulment of sale filed by herein complainant and his wife before the Regional Trial Court of Valenzuela City, Branch 75, docketed as Civil Case No. 4353-V-94, wherein they raised the same issues ventilated in these administrative complaints, was dismissed by reason of their failure to prosecute the case.3 Since the dismissal was without any condition, it is understood to be with prejudice and had the effect of an adjudication on the merits.[4] Perforce, the dismissal of the action for annulment of the sale put effectively to rest the issues relating to the validity and regularity of the execution sale.

Moreover, the act of complainant and his wife in exercising the right of redemption, despite the lapse of the period of redemption, is an implied admission of the regularity and validity of the execution sale. Further, it is not denied that the certificate of sale was registered only on 22 January 1991,[5] almost one year from the time it was issued on 20 February 1990,[6] upon the request of complainant and his wife for extension of time to pay the judgment debt.

It is also worthy to note that the administrative complaints against herein respondent sheriff was filed with the Office of the Court Administrator only on 15 September 1993[7] and, prior thereto, with the Office of the Ombudsman on 23 June 1993.[8] The said complaints were filed only after complainant had failed to redeem the property on 17 December 1992 as the redemption period has already expired. It was only then that the complainant questioned the alleged irregularity of the levy and the validity of the execution sale. This only shows that the filing of the

---

[3] Annexes "1" & "2", *Rollo* 2, A.M. No. P-93-990.

[4] Sec. 3, Rule 17, Revised Rules of Court, now Sec. 3, Rule 17, 1997 Rules of Civil Procedure.

[5] *Rollo* I , 35.

[6] *Ibid.*, 32

[7] *Rollo* I , 4.

[8] *Rollo* III , 5.

Supreme Court E-Library

administrative complaints was a clever ploy to give some basis to the effort of the complainant to recover his property.

Furthermore, the records are bereft of evidence to substantiate the alleged irregularities, to wit: that respondent sheriff levied on complainant's real properties without first proceeding against the personal property and that there was no posting of notices of auction sale.

Respondent cannot be faulted for his acts of immediately proceeding against the real property of complainant without exhausting first his personal property. The records show that the writ of execution was served on complainant's wife on 16 January 1990 but the latter refused to receive the same and did not allow respondent to enter the house.[9] He cannot, without the consent, express or implied, of the owner of the house, enter the same and attach the personal property therein, without rendering himself liable as trespasser. Reasonable diligence is all that is required of a sheriff in making a levy, and that the question as to what constitutes such diligence depends upon the particular facts, in connection with the duty involved.[10] An officer must perform his duties in the service of the writ without exercising unnecessary violence, or subjecting the persons on whose premises he enters to indignities.[11]

There was no patent irregularity in respondent's act. It should be emphasized that respondent was mandated to comply with the court order and it is sufficient that the writ he sought to execute was regular on its face and issued by competent authority. Sec. 15, Rule 39 of the Rules of Court, which was the governing law at the time[12] directs him to enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. We are convinced

---

[9] See Comments, *Rollo* I , 23.

[10] See Sec. F(2), Manual for Clerks of Court, *citing* 47 Am. Jur. 855.

[11] *Philippine Bank of Communications v. Torio, et al.,* 284 SCRA 67, 76, [1998], citing 70 Am. Jur. 2d, §61, 275.

[12] Now, Sec. 9 (b) of the 1997 Rules of Civil Procedure.

Supreme Court E-Library

that respondent acted in good faith and that he did what was expected of any sheriff given charge of enforcing a court order. When a writ is placed in the hands of a sheriff, it is his ministerial duty to proceed with reasonable celerity and promptness to execute it in accordance with its mandate.[13]

Besides, if it were true, as complainant claims, that he has sufficient personal property to satisfy the judgment debt, he could have easily prevented respondent from proceeding with the execution sale of the levied real properties either by voluntarily offering his personal property for attachment or by tendering the amount of the judgment debt sought to be enforced and the costs which may have been incurred pursuant to Section 20 of Rule 39.

As to the lack of posting of the notice of auction sale, the fact alone that there was no certificate of posting attached to the sheriff's record of the execution sale is not sufficient to prove the lack of posting.[14] Complainant had the onus to present evidence that respondent sheriff failed to comply with the posting requirement of the law. In the absence of contrary evidence, as in these cases, the presumption prevails that the sheriff has performed his official duty.[15]

However, we find respondent to have been remiss in his duty to prepare the corresponding sheriff's return with respect to the posting of notices. Be that as it may, his failure did not cause grave prejudice to the complainant as would warrant the recommended fine and stern warning which, to our mind is too harsh a penalty. We should not be unmindful of the fact that the instant complaints were filed as part of the strategy of the complainant to put up a defense in the case for recovery of possession filed against the complainant and his wife by the highest bidder of their property. It may be remembered that the complainant and his spouse also filed an action for nullification of title, etc. in Civil Case No. 4353-V-94. The latter was dismissed for failure of complainant to prosecute the case.

---

[13] Sec. F (2), Manual for Clerks of Court.

[14] See *Olizon v. Court of Appeals,* 236 SCRA 148 [1994].

[15] *Salvacion P. Onquit v. Judge Aurora Binamira-Patria, et al.,* A.M. No. MTJ-96-10895, 8 October 1998.

Supreme Court E-Library

Under the foregoing circumstances, we deem it appropriate to merely admonish the respondent to be more diligent in the performance of his duty.

WHEREFORE, for neglect of duty in failing to make sheriff's return with respect to the posting of notice in connection with the execution of judgment, respondent Deputy Sheriff Fernando Cruz of Branch 171, Regional Trial Court of Valenzuela City is hereby *ADMONISHED* to be more diligent in the performance of his duty and *WARNED* that any neglect of duty on his part in the future would be dealt with severely.

SO ORDERED.

Puno, Kapunan, and, *Pardo, JJ.,* concur.

Ynares-Santiago, J., on leave.

FIRST DIVISION

[G.R. No. 125167. September 8, 2000]

PRODUCERS BANK OF THE PHILIPPINES, ANTONIO M. PERRY, and TRISTAN CATINDIG, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS and THE COURT OF APPEALS,** *respondents.*

SYNOPSIS

In 1980, Dewey Dee, *et al.* executed in favor of Ayala Investment and Development Corporation (AIDC) a deed pledge covering their shares of stock in Producers Bank of the Philippines to secure the full payment of the obligation of Continental Manufacturing Corporation (CMC). Eventually, AID ccertified of stock registered in the name of pledgors and issue the same in the of AIDC. Later, in 1989, after BPI acquired all assets and liabilities of AIDC in 1985, PBI, as succerssor of AIDC, filed with the RTC a complaint for specific performance