

MANUEL U. DEL ROSARIO, ESPERANZA DEL ROSARIO, NICOLAS KALUBIRAN, ADELAIDA KALUBIRAN, COMPLAINANTS, VS. JOSE T. BASCAR, JR., DEPUTY SHERIFF, MUNICIPAL TRIAL COURT IN CITIES (MTCC...

A.M. No. P-88-255. March 03, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

In a verified letter - complaint Manuel U. del Rosario, et. al. charged Deputy Sheriff Jose Bascar, Jr. of the Municipal Trial Court in Cities (MTCC), Branch 4, Cebu City for "Gross Ignorance of the Law, Levying Properties Unreasonably and Unnecessarily Levying Properties with Malice and Abuse of Authority and Gross/Wilful Violation of Law."

This case originated from a complaint filed with the then Human Settlements Regulatory Commission, Region VII, Cebu City in HSRC Case No. REM-0006-210685, entitled "Angel Veloso, et al. vs. Esperanza del Rosario, et al." for violation of P.D. No. 957, otherwise known as the Subdivision and Condominium Buyer's Protective Decree.

A decision was rendered on the aforesaid case on June 10, 1986, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations respondents Esperanza Del Rosario, Manuel del Rosario, Adelaida Kalubiran and Nicolas Kalubiran are hereby ORDERED, - jointly and severally -

1. to apply for and secure a Certificate of Registration from this Commission within two (2) months from receipt hereof;
2. to accept installment payments from complainants with interest at the legal rate of twelve per cent (12%) per annum and to execute a Deed of Sale over subject lots once full payment of the unpaid balance of the purchase price is effected;
3. to register the Contract of Sale executed on March 1, 1974 (Annex "A") with the Office of the Register of Deeds of Cebu City within one (1) month from receipt hereof;
4. to pay a fine of P2,000.00 for failure to secure a certificate of registration and a license to sell from this Commission within one (1) month from receipt hereof;
5. to develop the subdivision open space, parks and playgrounds as advertised within six (6) months from receipt hereof; and
6. to complete development of subdivision roads and underground drainage facilities up to lot lines within six (6) months from receipt hereof." (pp. 24-25, Records)

Complainants alleged that respondent Deputy Sheriff is grossly ignorant of the law in implementing the writ of execution of the dispositive portion of the aforesaid case which orders specific performance and hence, is

governed by Section 9 of Rule 39 of the Rules of Court. They said that under this Section, no levy of personal or real properties is required but through gross ignorance, respondent executed the writ pursuant to Section 15 of Rule 39 and proceeded to levy on execution three (3) parcels of land having a total market value of P1,236,600.00 of Miradel Development Corporation wherein Esperanza del Rosario has alleged shares, interests and participation, in order to satisfy the judgment involving specific performance. Complainants alleged further that the levy on execution involved registered lands and hence, must be in accordance with Section 71, R.A. 496 which requires that levy on execution of registered lands must contain a reference to the number of the Certificate of Title of the land to be affected and the volume and page in the registry book where the certificate is registered.

It is contended by the complainants that respondent is grossly ignorant of the law considering that the dispositive portion of the decision is for specific performance and the fine of P2,000.00 is not payable to the prevailing parties but to the Commission. Complainants asserted that the levy on the three (3) parcels of land belonging to the Miradel Corporation with a value of more than 1 million pesos is excessive considering that, apparently, the levy is for the payment of the fine of P2,000.00 and the implementation of the writ was tainted with malice and abuse of authority because he could have just levied on the personal properties of the herein complainants which could satisfy the alleged judgment and costs.

Pursuant of a Resolution of this Court dated November 23, 1988, respondent filed his comment on the complaint (pp. 31-37, Rollo). Respondent contended that the levy was not made to satisfy the fine of two thousand pesos (P2,000.00) but to protect the rights of the prevailing parties considering that complainants refused to comply with the decretal portion of the decision. He stated that the lots he levied upon which are portions of the lots in controversy covered by TCT Nos. 55606 and 55607 are vacant and there was malice and bad faith in the transfer of the lots in question to Miradel Development Corporation wherein complainant Esperanza del Rosario is the treasurer.

In the resolution of this Court dated December 5, 1990, this case was referred to Executive Judge; Regional Trial Court, Cebu City for investigation, report and recommendation. Executive Judge Godardo A. Jacinto in his report dated October 10, 1991, came up with the following findings and recommendation.

"It was on 8 September, 1988 that respondent Bascar, accompanied by Angel Veloso's lawyer, went to herein complainant [Manuel del Rosario's residence and office in order to serve the writ]. Manuel del Rosario is one of the respondents in the HSRC case and the attorney-in-fact of therein correspondent Esperanza del Rosario. Upon being requested to comply with the dispositive portion of the judgment, complainant Manuel del Rosario informed respondent Bascar that the lots subject of the HSRC case were no longer available. Thereupon, respondent Bascar went to the Office of the HSRC to check on the titles of the lots, after which he went to the Register of Deeds to look into the status of the lots and their titles. There he discovered that the lots subject of the HSRC case which were previously covered by TCT Nos. 55606 and 55607 had already been consolidated and then subdivided into sublots. Respondent Bascar then made a levy on three (3) of the derivative lots whose combined area would more or less approximate the area of the lots subject of the HSRC judgment. These lots happen to be registered in the name of Miradel Development Corporation.

"On 12 September, 1988 respondent Bascar made a Return of the writ (Exh. B-1), in which he gave an account of the steps he took in implementing the writ. He further explained why he levied on the three (3) lots that were registered in the name of the Corporation. His act of levying on the Corporation's lots led to the present administrative case filed by Manuel del Rosario and his co-respondents in the HSRC case. x x x.

"Findings and Recommendations;

"Respondent Bascar admitted in his testimony that he erred in levying on the lots of Miradel Development Corporation, but as soon as his attention was invited to such mistake, he filed a Notice of Withdrawal of said

levy with the Register of Deeds (Exh. 11). When he was asked why he chose to levy on the three (3) lots that were registered in the name of the Miradel Development Corporation, respondent Bascar explained that it was his honest belief that the said entity was a family corporation of the del Rosarios who were the judgment obligors in the HSRC case. He further stated that his purpose was to preserve the lots subject of the HSRC case so that they could not be disposed of in avoidance of the judgment in favor of the Velosos. Respondent Bascar also testified that his purpose in levying on the lots was not to satisfy the fine of P2,000.00 but only to protect the interests of the prevailing parties in the HSRC case by securing the lots against possible disposition to other persons. In the perception of the undersigned, respondent Bascar acted in good faith and further, the alleged malice and abuse of authority which the complainants claimed to have visited his acts have not been established. It is important to note that Miradel Development Corporation whose lots were erroneously levied had not complained against respondent Bascar. And there is no showing that the Corporation suffered any damage or prejudice by reason of respondent's act of levying on its lots which was later on rectified by his withdrawal or lifting of the notice of levy (Exh. 11).

"The allegation in the complaint that respondent Bascar did not observe the prescribed procedure for execution and that his act of levying on Miradel Development Corporation's lots worth over a million pesos to satisfy a fine of only P2,000.00 was unnecessary, unreasonable and abusive is not quite tenable. As amply explained by respondent Bascar, his purpose in levying on the three (3) lots was to keep them from being disposed of. He felt it was important to do it since the judgment ordered therein respondents to accept installment payments from the Veloso spouses and to execute the corresponding document of sale as soon as the lots were paid in full. Certainly, the favorable judgment for the Veloso spouses would be frustrated if in the meantime subject lots were transferred to others. According to respondent the lots subject of the contract of sale between the Veloso spouses and the del Rosarios were covered by TCT Nos. 55606 and 55607 and in the Register of Deeds he was informed that the lots had been consolidated and then subdivided and sold to other persons. In levying on the three (3) lots of the Corporation, respondent Bascar honestly believed that said lots were derived from those that had been sold on installment in favor of Angel Veloso and unless these were secured from further disposition the judgment in favor of the latter could no longer be executed. Respondent Bascar might have been wrong in his belief and conclusion, but he cannot be faulted for having done so under the circumstances of the case. It is noteworthy that complainant Manuel del Rosario exhibited an uncooperative if not antagonistic attitude as he made no attempt to conceal his intention not to abide by the HSRC judgment. In fact, as admitted by complainant Manuel del Rosario he filed a petition for certiorari against the HSRC, et al. praying to have its judgment annulled (Exh. 1), which action was dismissed by Branch 10 of the RTC of Cebu (Exh. 2). Not satisfied, he filed a complaint for the same purpose before Branch 12 of the same Court (Exh. 3), which also dismissed it (Exh. 4). From there, complainants went up to the Court of Appeals in a Petition for Certiorari that was dismissed by said Court (Exh. 5). A similar complaint filed by complainants questioning the HSRC judgment was filed before Branch 24 of the RTC of Cebu but it was likewise dismissed (Exh. 6). Finally, even as the herein complainants were ordered under the final judgment of the HSRC to accept installment payments for the lots from Angel Veloso (par. 2, Exh. 9), complainant Manuel del Rosario refused to receive such payment, and in his letter of refusal (Exh. 9) he made it clear that he did not recognize the HSRC judgment (tsn, pp 8-9, July 12, 1991). And not only that. Complainants also did not pay the fine as ordered by the HSRC. As hinted earlier, respondent Bascar's unsolicited act of digging into the papers of incorporation of the Miradel Development Corporation and in proceeding to levy on its lots may have been in reaction to complainant Manuel del Rosario's seeming disregard for the final judgment of the HSRC which it was his (Bascar's) duty to enforce. Certainly, such an act does not amount to gross ignorance of the law, negligence and abuse of authority.

"It is then respectfully recommended that respondent Jose T. Bascar be merely admonished and warned to be more prudent or discreet in the performance of his duties.

"Cebu City, Philippines, 10 October, 1991." (pp. 2-4, report).

We disagree. The Court does not subscribe to mere admonition of respondent deputy sheriff as recommended by the investigating Judge. His unjustifiable acts demand sanction. Respondent acted with gross ignorance of the law in making an unreasonable and unnecessary levy in the process of enforcing the writ of execution of a decision ordering specific performance and payment of a fine of P2,000.00. He deviated from what was decreed in the writ by making an unnecessary levy on execution of three lots allegedly forming part of the lots in controversy which were already sold to the Miradel Development Corporation by the complainants.

The manner in which respondent conducted the levy leaves no room for doubt that he was unmindful of the rule that in the exercise of his ministerial duty of enforcing writs, it was incumbent upon him to ensure that only that portion of a decision decreed in the dispositive part should be the subject of execution, no more, no less. He made no effort to limit the levy to the amount called for in the writ.

Respondent had no reason to make a levy of three parcels of land belonging to Miradel Development Corporation after having found that Esperanza del Rosario, one of the respondents in the HSRC case, was treasurer thereof on the pretext of protecting the prevailing parties whom he claims could eventually lose the lots by reason of the sale thereof by complainants to the said corporation. "It should be recalled that a purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, on a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of his own judgments, upon the propriety or impropriety of the act done (*Lamb v. Phipps*, 22 Phils.456). Discretion, on the other hand, is a faculty conferred upon a court or official by which he may decide the question either way and still be right (*Asuncion v. De Yriarte*, 28, Phil. 67)."[1] There is no doubt that respondent acted beyond the bounds of his duty by allocating unto himself the power of the Court to pierce the "veil of corporate" entity and improvidently assuming that since complainant Esperanza del Rosario is the treasurer of the Miradel Development Corporation, they are one and the same. It is well-settled doctrine both in law and equity that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members. The mere fact that one is president of a corporation does not render the property he owns or possesses the property of the corporation, since the president, as individual, and the corporation are separate entities (*Cruz v. Dalisay*, 152 SCRA 483). More importantly, it was not incumbent upon him as sheriff to determine for himself the means how to safeguard the rights of the prevailing party in a case for specific performance. All that he was called upon to do in such instance was to serve the writ of execution with a certified copy of the judgment requiring specific performance upon the party/parties against whom the same was rendered and in case of failure to abide, it is at the prevailing party's instance not the sheriff's that the aid of the court may be sought.

There was failure, however, to establish with certainty that the actuation of respondent deputy sheriff was attended with malice and was done so as to prejudice a third party. As the respondent explained, he wanted to protect the interest of the prevailing parties over the lots in controversy. Though he erroneously made the levy, the same cannot be looked upon with malicious intent although effected unreasonably. The withdrawal of notice of levy on execution dated June 9, 1989, filed by the respondent sheriff to rectify his error shows his lack of malice and serves to mitigate his liability.

This Court had said before, and reiterates it here, as it has done in other cases, that the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding justice to the lowest clerk, should be circumscribed with the heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but above all else be above suspicion.[2] Respondent's actuations in enforcing the Writ of Execution in HSRC Case No. REM-0006-210685 did not live up to this strict standard.

ACCORDINGLY, a fine of P5,000.00 is hereby imposed on respondent Deputy Sheriff Jose Bascar, Jr., Municipal Trial Court in Cities, Branch 4, Cebu City, for conduct prejudicial to the best interest of the service,

payable within thirty (30) days from notice. Respondent is hereby warned that a repetition of the same or of any act calling for disciplinary action, will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, and Griño-Aquino, JJ., concur.

[1] Yoeng v. Monblan, A.M. No. P-89-367, January 9, 1992.

[2] Jereos, Jr. v. Reblando; Sr., Adm. Matter No. P-141, May 31, 1976, 71 SCRA 126; Anang v. Garampil Vda. de Blas, A.M. No. P-91-602, Oct. 15, 1991.

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