

ATTY. WILFREDO C. BANOOGON, COMPLAINANT, VS. FELIPE T. ARIAS, SHERIFF III, OFFICE OF THE CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, DAVAO CITY, RESPONDENT.

A.M. No. P-97-1240 (Formerly OCA IPI No. 96-155-P). June 19, 1997

Ponente: VITUG, J.

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VITUG, J.:

In an affidavit-complaint, dated 20 December 1995, Atty. Wilfredo C. Banogon, Vice President for Legal and Claims, of Great Pacific Life Insurance Corporation (“Grepalife”), charged Sheriff Felipe T. Arias of the Municipal Trial Court in Cities (“MTCC”), Office of the Clerk of Court, Davao City, with “Gross Misconduct and/or Conduct Prejudicial to the Service” relative to the latter’s actuations on the levied property of defendant Al Fresco Development Corporation (“Al Fresco”) in Civil Case No. 23037 before the Metropolitan Trial Court (“MTC”) of Makati.

Grepalife, the plaintiff in Civil Case No. 23037, levied on execution the property of Al Fresco located in Davao that included three parcels of land covered by Transfer Certificates of Title (“TCT”) No. T-106641, T-106642 and T-104193. On 03 April 1987, the writ of execution and the notice of levy were annotated on the copies of the aforementioned TCTs. On 18 May 1992, at the instance^[1] of respondent Sheriff, the entries on the certificates were cancelled and new Certificates of Title No. T-176514, T-176519 and T-176515 were issued in favor of one Benjamin Remoquillo. In his letter of 22 October 1992 addressed to Grepalife, respondent Sheriff enclosed a Security Bank check in the amount of P94,461.04 issued by Remoquillo for the “redemption of the lots.” In a communication, dated 09 October 1992, it sent to Remoquillo, Grepalife wrote back:

“This has reference to your offer to release the three (3) lots in Davao City for the amount of P94,000.00.

“We are pleased to inform you that the Company is willing to consider your offer if the same is increased to P200,000. If you are amenable to said proposal, you may forward to us the check of P94,000 with the balance to be paid within 6 (six) months and covered by post dated checks.”^[2]

Grepalife subsequently learned of the cancellation of the writ of execution and notice of levy on TCT No. T-106641, T-106642 and T-104193 when it tried to verify the status of the TCTs.

Complainant, in his affidavit-complaint, denounced the actuations of respondent Sheriff, particularly his misrepresentation with the Register of Deeds that the judgment award was already fully satisfied when there was, in fact, still a deficiency in the sum of P382,070.63.

In his 1st endorsement, dated 05 January 1996, Deputy Court Administrator Reynaldo L. Suarez required respondent Sheriff to comment on the affidavit-complaint.

In his compliance, dated 24 February 1996, respondent Sheriff admitted that the lots covered by TCT No. T-104193, T-106642 and T-106641 in the name of Al Fresco were among the property he levied by virtue of a writ of execution issued by the Makati MTC. On 19 May 1992, Benjamin Remoquillo paid, on behalf of Al

Fresco, the judgment indebtedness, computed to be in the amount of P94,461.04 inclusive of interests,[3] on which basis respondent Sheriff then advised the Register of Deeds of Davao City that eventually led to the cancellation of the annotations on the certificates of title covering the lots. Respondent thereupon made a Sheriff's Return, dated 19 May 1992, to the MTC to the effect that Al Fresco's indebtedness in Civil Case No. 23037 had been fully paid.

In his reply, dated 01 March 1996, complainant countered that when respondent Sheriff transmitted the check to Grepalife on 22 October 1992, the notice of levy on execution had already been canceled. Complainant noted that the check bore the date 19 May 1992 while respondent Sheriff's letter to the Register of Deeds was dated the day previous (18 May 1992). Complainant added that the subject property could not have been subject to redemption since there was as yet no execution sale.

In his rejoinder[4] of 20 March 1996, respondent Sheriff averred that when he requested, on 18 May 1992, the Register of Deeds to cancel the annotations of the certificates of title, the check, although dated 19 May 1992, was already in his possession. On 19 May 1992, he requested the Grepalife office in Davao to get the Check but the corporation did not pick it up. He claimed that the computation on the judgment debt was made by Atty. Justino Marquez himself who was then the counsel of Grepalife.

In a memorandum addressed to Chief Justice Andres R. Narvasa, dated 11 June 1996, the Office of the Court Administrator ("OCA"), through Deputy Court Administrator Reynaldo L. Suarez, made the following findings and recommendation:

"It would seem that it is quite unfair that complainant is charging Sheriff Arias with accepting the payments by Benjamin Remoquillo while he did not complain against Sheriff Arias for the amounts paid by Liwayway Paulino and Rosita Miyoshi for the indebtedness of Al Fresco with Grepalife regarding only the account corresponding to their claimed lots.

"A little mathematics will show that it is not so.

"In his letter dated May 18, 1992, Sheriff Arias wrote the Register of Deeds 'that the defendants already paid the money judgment x x to the full satisfaction of ' Grepalife. He indicated that the titles involved were: T-106641, T-106642 and T-104193.

"The bid price by Grepalife for said three lots is as follows:

"1. T-106641 - P 15,000.00

"2. T-106642 - 15,000.00

"3. T-104193 - 30,000.00

Total- P 60,000.00

"Following the method of computation alleged by Sheriff Arias to have been given him by Atty. Justino Marquez, the following [would] be the total obligation due on the three lots claimed by Benjamin Remoquillo:

"Principal

x interest rate p.a.

P60,000.00

.12

= interest p.a.

x years: Sept 1/83-Aug 31/91

P 7,200.00

8

= interest for 8 years

+ interest: Sept 1/91-May 19/92

P57,600.00

6,120.00

Total interest due

+ principal amount due

63,720.00

60,000.00

Total obligation for 3 lots

P123,720.00

“Following this same method of computation, since Paulino paid only P45,000.00 on December 9, 1988, she must have paid for only one (1) lot out of the three (3) which were indicated in the margin of the Notice of Levy as hers, namely T-104211, T-104213, and T-104212. The bid prices for said lots are P33,304.44, P31,254.93 and P33,475.23, respectively. Adding the proportionate costs for expenses, the amounts to be paid by Paulino rose to P43,500.31, P41,204.86 and P43,691.59, respectively.

“The same is true for Miyochi. Her lot is T-106637 with a bid price of P15,000.00. Adding the interest for 6 years and the proportionate cost of the expenses would be P31,999.34. It is to be noted, though, that she paid only P30,000.00. One cannot begrudge the seeming generosity of the judgment creditor when the same is displayed.

“No wonder, Grepalife’s Atty. Juan Salazar wrote Benjamin Remoquillo in this wise:

“This has reference to your offer to release the three (3) lots in Davao City for the amount of P94,000.00.

‘We are pleased to inform you that the Company is willing to consider your offer if the same is increased to P200,000.00. If you are amenable to said proposal, you may forward to us the check of P94,000.00 with the balance to be paid within six (6) months and covered by post dated checks.’

“because, adding the proportionate costs for expenses (3 lots x P6,199.34/lot = P18,598.02) to the calculated total obligation for the 3 lots claimed by Remoquillo (P123,720.00), one will arrive at a total of P142,318.02. This is closer to the P200,000.00 figure being asked of Remoquillo to be paid for the release of the three (3) lots he has claimed.

“Definitely, Grepalife would NEVER agree to the P94,000.00 amount being paid by Remoquillo.

“By sending his letter of May 18, 1992 to the Register of Deeds of Davao City requesting that ‘the notice of levy annotated at the back portion of x x x titles (T-104193, T-106641 and T-106642) be lifted by your office’ because ‘the defendants have already paid the money judgment in the above-entitled case to the full satisfaction of herein plaintiff (Grepalife),’ Sheriff Arias has allowed an unauthorized person – Benjamin Remoquillo – through a devious machination to remove some of the properties levied. He is not only negligent but also dishonest. He is not fit to hold public office.

“In view of all the foregoing, it is respectfully recommended that Felipe T. Arias, Sheriff III, Office of the Clerk of Court, MTCC, Davao City be declared guilty of negligence and dishonesty in the performance of his duties and be dismissed from the service with forfeiture of all retirement benefits and with prejudice to reinstatement in the government, including government-owned or controlled corporations.”[5]

In its resolution, dated 24 July 1996, the Court required the parties to manifest if they were willing to submit the case for resolution on the basis of the pleadings already on file. Complainant and respondent both answered in the affirmative in their respective compliances of 28 August 1996 and 04 September 1996.

The Court sustains the recommendation of OCA but finds the penalty of dismissal it seeks to impose on respondent to be too harsh.

The total obligation on the three subject lots really amounted to P123,720.00.[6] The lots, however, were released for only P94,000.00 because of the 18th May 1992 letter of respondent Sheriff to the Register of Deeds of Davao requesting that “the notice of levy annotated at the back portion of x x x titles (T-104193, T-106641 and T-106642) be lifted” since “the defendants have already paid the money judgment x x x to the full satisfaction of x x x (Grepalife).” The OCA thereby concluded that Sheriff Arias was not only negligent but likewise dishonest and therefore should be declared unfit to further hold public office.

The OCA cited *Tantingco vs. Aguilar*[7] in seeking to justify in the instant case the penalty of dismissal. The facts in *Tantingco* would clearly warrant the imposition of that penalty; hence –

“x x x [T]hat sometime in August 1970, Atty. Sira also assigned the respondent to take care of the properties attached under the same writ in the sawmill of Agapito Tan; that the respondent refused to make inventories of the attached properties at the first attachment and only submitted the inventory signed by Deputy Sheriff Elias Anacleto and the then Deputy Sheriff Ricardo L. Bliss when Agapito Tan wrote the Provincial Sheriff on January 14, 1971, who, in turn, issued a memorandum to the respondent to make the inventories; that some of the properties attached were missing and sixteen (16) trucks and one truck fully loaded with spare parts were brought by the respondent to the PC headquarters at Tipanoy, Iligan City; that one (1) electric switch motor was taken by Quirino Zalsos, a guard watching the attached properties hired by the respondent; that the guard Quirino Zalsos sold said electric switch motor to Te Ban Uy for P1,500.00 because he allegedly was not paid his salary; that three (3) units of GMC trucks in running condition and one (1) unit without tire and spare part were delivered by the respondent to Oming Lluch; that the truck owned by Asiong Cabus was not accepted by

said owner because there were spare parts missing; that PC Sergeant Balenti got lumber from the sawmill and made them into six (6) tables, one (1) dozen chairs and five (5) pieces of chess board at the house of Maximo Jaralba; that said PC Sergeant Balenti also brought one (1) truck fully loaded with lumber outside; that the PU car of one Vicente Catubay was hired by respondent to go to Palao, Iligan City, and got something, said to be an iron, from the sawmill contained in a sack which was brought to the house of the respondent at Iligan City; that the respondent also went to the PC Headquarters and got a spare part called 'eje' and brought the same to his house x x x." [8]

Having taken possession of the property under the writ of attachment, respondent Sheriff did not exhibit any genuine effort to safekeep the attached property. Totally unconcerned, he allowed unauthorized persons to cart away some of the attached property and, indeed, appropriated for himself a part thereof.

The case that would have had a factual similarity to the present case was that of *Cunanan vs. Tuazon*, [9] where the Court dismissed the respondent Deputy Sheriff. Like Arias, he requested the cancellation of the annotation of the levy on execution on the affected property without prior notice to the judgment creditor and without first obtaining authority from the Presiding Judge. But there were other attendant circumstances against Deputy Sheriff Tuazon. His obstinate refusal and continued failure to give an explanation to the charges despite repeated notices revealed a brazen disregard of lawful processes and orders of the court. After the cancellation of the levy on execution on 18 August 1992, enabling the judgment debtor to sell the property on 24 August 1992, Sheriff Tuazon issued another notice of levy on execution on the same property on 26 August 1992 in order to mislead the complainant that the notice of levy was filed late. Sheriff Tuazon's misconduct was compounded by ample evidence found by the investigating judge that Tuazon had been offered monetary consideration by the judgment debtor which he accepted.

The additional incriminating circumstances in *Tantingco* and *Cunanan* are wanting in the instant case. It is not established that respondent Sheriff has been motivated by malice or money. Respondent Arias has explained:

"The mere fact that I immediately made a return to MTC Makati with copy furnished Atty. Juan Salazar on May 19, 1992 when payment was made by Remoquillo, shows that no attempt to conceal anything was made and there was utmost transparency." [10]

This Court has said it before, and here reiterates it, that the conduct and behavior of every person connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, is circumscribed with a heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but also, and above all else, be above suspicion. [11]

Respondent, in his questioned actuation, regrettably did not live up to this strict standard.

ACCORDINGLY, a fine of P10,000.00 is hereby imposed on respondent Sheriff Felipe Arias, Municipal Trial Court in Cities, Davao City, for conduct prejudicial to the best interest of the service. Respondent is further sternly warned that a repetition of the same or of any act calling for disciplinary action will be dealt with most severely.

SO ORDERED.

Padilla, (Chairman), and Hermosisima, Jr., JJ., concur.
Bellosillo, and Kapunan, JJ., on leave.

[1] "As per letter request of Felipe T. Arias, Sheriff III of the Office of the Clerk of Court-Sheriff, Davao City requesting this office to lift and/or cancel the levy on execution made on this certificate of title. Said levy on execution is lifted and/or cancelled."

[2] Rollo, p. 12.

[3] Covered by SBTC Manager's Check in the name of Grepalife.

[4] Denominated "Affidavit to Reply of Complainant."

[5] Rollo, pp. 59-62.

[6] The total obligation on the three lots should have amounted to P123,720.00. Thus:

"Principal

x interest rate p.a.

P60,000.00

.12

= interest p.a.

x years: Sept 1/83-Aug 31/91

P 7,200.00

8

= interest for 8 years

+ interest: Sept 1/91-May 19/92

P57,600.00

6,120.00

Total interest due

+ principal amount due

63,720.00

60,000.00

Total obligation for 3 lots

P123,720.00”

[7] 81 SCRA 599.

[8] At. p. 603.

[9] 237 SCRA 380.

[10] Rollo, p. 22.

[11] Del Rosario vs. Bascar, Jr., 206 SCRA 678; Jereos, Jr. vs. Reblando, Sr., 71 SCRA 126.

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