

FILIPINA YAP SY, COMPLAINANT, VS. CARMELITO D. CATAJAN, RESPONDENT.

Adm. Matter No. P-86-33. August 15, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is an administrative complaint filed by complainant Filipina Yap Sy against respondent Carmelito D. Catajan, Deputy Sheriff of the Regional Trial Court, San Fernando, Pampanga, for abuse of authority in implementing a Writ of Execution issued in Civil Case No. 4493 entitled "Maligaya Financing Corporation vs. Spouses Rosalinda N. Dizon, Roland N. Dizon and Filipina Yap Sy."

On 22 August 1985, complainant Yap Sy and the spouses Dizon were adjudged liable in Civil Case No. 4493 to the Maligaya Financing Corporation ("Maligaya") in the amount of P6,173.15 with interest at three percent (3%) per month from 31 May 1985, costs and attorney's fees in an amount equivalent to twenty-five percent (25%) of the collectible amount.

On 20 June 1986, respondent Deputy Sheriff Catajan and two (2) employees of Maligaya went to Ms. Yap Sy's residence to implement an Alias Writ of Execution. In the process, respondent Catajan and his two (2) companions took complainant Yap Sy's Sony Trinitron TV with Serial No. 629817 KV 1943 and her Sony Betamax 5100 despite her claim that the two (2) appliances, which she valued at P30,000.00, together with her other movable items, were subject to a Chattel Mortgage executed in favor of one Betty D. Sy to secure complainant's loan from Betty D. Sy in the amount of P300,000.00.

On 25 June 1986, respondent Catajan issued a Notice of Sheriff's Sale setting the date of public auction sale of the television set and the betamax machine on 7 July 1986 at 10:00 A.M.. On the same date, i.e., 25 June 1986, Betty D. Sy filed a third-party claim dated 24 June 1986 in respect of the television set and the betamax machine. Subsequently, on 7 July 1986, respondent Catajan issued a Certificate of Sale covering the television set in favor of judgment creditor Maligaya, as the highest bidder for the amount of P4,000.00. On 11 July 1986, complainant Yap Sy received from respondent Catajan a Notice that Maligaya had posted a bond on 3 July 1986 in the amount of P4,000.00 pertaining to the television set.

In her complaint, Ms. Yap Sy charges that respondent Catajan, in proceeding with the auction sale, committed an abuse of authority because: (1) he did not state in the Certificate of Sale that the property bought in the public auction sale was the subject of a third-party claim of Betty D. Sy, in violation of Section 28, Rule 39 of the Revised Rules of Court; (2) he did not require Maligaya as highest bidder to pay its winning bid in cash, in violation of Section 23, Rule 39 of the Revised Rules of Court; and (3) the public auction sale was defective from the beginning because respondent Catajan informed complainant Yap Sy that Maligaya had posted a bond on 3 July 1986, only on 11 July 1986, thereby depriving complainant of an opportunity to stop the auction sale by posting a counterbond.

In his Answer dated 27 March 1987, respondent Catajan stated that what he had levied upon was a 19 inch Sony

Colored TV with Serial No. 629817 KV 1943, whereas the Sony Colored TV with Serial No. 629817 KV 1943 listed in the Chattel Mortgage in favor of Betty D. Sy was a 20 inch and not a 19 inch set. Respondent also noted that the Chattel Mortgage was registered in the Chattel Mortgage Registry only on 16 June 1984, eighteen (18) months after its execution and six (6) months after Civil Case No. 4493 was filed. Respondent argues that he saw no need for referring in the Certificate of Sale to the third-party claim of Betty D. Sy. Respondent Catajan further argues that he did not require Maligaya to pay its bid in cash considering that its judgment credit was more than P4,000.00, the amount of the bid. Finally, respondent claims that he had sent to complainant Yap Sy and Betty D. Sy notices of the Sheriff's Sale on 25 June 1986, which notice was duly received by complainant on 30 June 1986 but not by Betty Sy who had, per postman's note, "moved, address unknown." Respondent further claims that he had sent notices to both complainant and third-party claimant on 3 July 1986 of Maligaya's posting of a bond.

The first charge against respondent Catajan relates to Section 28, Rule 39 of the Revised Rules of Court, which reads:

"Section 28. Certificate of sale where property claimed by third person. -- When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to Sections 25, 26 and 27 of this Rule, shall make express mention of the existence of such third-party claim."
(Italics supplied)

Here, there is no question that respondent Catajan failed to mention the existence of a third-party claim in the Certificate of Sale he issued covering the Sony Trinitron TV set. It appears that respondent Catajan tried to suggest that the TV set he had levied upon and sold was not the same TV set which was subject to the Chattel Mortgage. His suggestion is not persuasive, however, since the television set he had levied upon had the same serial number specified in the Chattel Mortgage as pertaining to the mortgaged television set: Serial No. 629817 KV 1943. Respondent Catajan apparently also tried to suggest that the Chattel Mortgage in favor of Betty D. Sy may have been defective, perhaps even fraudulent. If respondent did try to suggest that, he is once again unpersuasive: he had no authority to decide for himself whether or not to disregard the Chattel Mortgage as invalid or ineffective.

In respect of the second charge against respondent Catajan, Section 23, Rule 39 of the Revised Rules of Court provides as follows:

"Section 23. Judgment creditor as purchaser. - When the purchaser is the judgment creditor, and no third-party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of his judgment. If it does, he shall pay only the excess." (Underscoring supplied)

Since in the present case, a third-party claim had in fact been filed, respondent Catajan was, under the above quoted Section 23, obligated to require the judgment creditor as purchaser to pay the amount of its bid in cash. In *Filipinas Colleges, Inc. v. Garcia Timbang*,^[1] this Court, invoking *Matias v. Provincial Sheriff of Nueva Ecija*,^[2] ruled that when there is a claim by a third-party, to the proceeds of the sale superior to the judgment creditor's credit, the latter as a successful bidder must pay in cash the amount of his bid as a condition precedent to the issuance to him of the certificate of sale. The above-quoted Section 23, Rule 39 of the Revised Rule of Court issued in 1964 makes no qualification as to the nature of the third-party claim. Thus, whether or not the third-party claim is a preferred credit vis-a-vis the judgment credit, is immaterial. So long as there exists a third-party claim, the sheriff has no discretion and must require the execution creditor who is the highest bidder to pay his bid in cash. The respondent Sheriff had no authority to decide that the execution creditor's claim was superior to the third-party claimant's Chattel Mortgage lien. Indeed, this appears no more than a prudential consideration so far as the Sheriff who would protect himself from liability is concerned. He must require the successful bidder to pay in cash so that that amount might be held by the Sheriff subject to the orders of the court

should litigation have broken out.

We conclude that respondent Sheriff was negligent in the performance of his duties in failing, firstly, to make express mention in the Certificate of Sale of the existence of third-party claim of Betty D. Sy, and secondly, in failing to require Maligaya as successful bidder to pay the amount of its bid in cash, there being a third-party claim. The Court considers that complainant has not sufficiently shown any bad faith on the part of respondent Catajan in failing to perform his official duties as Deputy Sheriff of the Regional Trial Court, San Fernando, Pampanga.

For the foregoing reasons, the Court, in its Resolution dated 7 March 1988, imposed on respondent Catajan a fine equivalent to one (1) month's salary with a warning that repetition of the same or similar offense will be dealt with more severely.

On 4 April 1988, respondent Catajan filed a Motion praying for a copy of the Report of the Office of the Court Administrator in his case, so that he, the respondent, might file a Motion for Reconsideration of the Resolution of the Court dated 7 March 1988. With the present extended Resolution, there is no need to furnish respondent Catajan a copy of the Report of the Office of the Court Administrator, which the Court as a matter of general policy, regards as confidential. Reports of this kind are not in any case conclusive upon this Court.

ACCORDINGLY, the Court Resolved to DENY the "Manifestation and Motion for Reconsideration" dated 4 April 1988 of respondent Catajan and to REITERATE its Resolution dated 7 March 1988 imposing a fine equivalent to respondent's salary for one (1) month with a warning that repetition of the same or similar offense will be dealt with more severely, without prejudice to respondent Catajan filing a Motion for Reconsideration of the Resolution of the Court dated 7 March 1988 as elaborated in the instant Resolution. Said Motion for Reconsideration must be filed within the reglementary period commencing from notice of the instant Resolution.

Fernan, C.J., Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] 106 Phil. 247 (1959).

[2] 74 Phil. 326 (1943).

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