

JOSE AND MILAGROS VILLACERAN, COMPLAINANTS, VS. WILMER M. BELTEJAR, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, SANTIAGO CITY, BRANCH 2, RESPONDENT.

A.M. NO. P-05-1934 (FORMERLY OCA I.P.I. NO. 03-1693-P). April 11, 2005

Ponente: PUNO, J.

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PUNO, J.:

This is an administrative case for Dishonesty, Oppression, and Falsification filed by spouses Jose and Milagros Villaceran against Wilmer M. Beltejar, Sheriff III, Municipal Trial Court in Cities (MTCC) of Santiago City, Branch 2.

Complainants alleged[1] that they were the accused in Criminal Case Nos. II-4781 and II-4782 for violations of Batas Pambansa Blg. 22 of the MTCC of Santiago City, Branch 2. They were acquitted of the charges but were ordered to pay damages for which their two lots in Marilao, Bulacan, covered by Transfer Certificates of Title Nos. T-184120 (M) and T-184126 (M), were levied upon.[2] Respondent sheriff scheduled the public auction sale of the properties at two o'clock in the afternoon of May 8, 2003 at the Office of the Clerk of Court, MTCC-Santiago City, Branch 2, but later transferred the venue to the Barangay Hall of Lambakin, Lambakin, Marilao, Bulacan, for the same date. During both times, complainants received notices of the sale from respondent sheriff. Thus, at the scheduled time and place, complainant Jose Villaceran together with a friend and interested bidder, Darwin Pascua, went to Marilao, Bulacan to participate in the auction sale. However, no sale was conducted because respondent sheriff failed to appear. This was attested to by the Barangay Captain of Lambakin, Marilao, Bulacan in his Certification dated June 5, 2003.[3] Notwithstanding the fact that no auction sale was actually conducted, respondent nevertheless issued in May 2003 a sheriff's certificate of sale making it appear that a public auction sale was conducted on May 8, 2003, and that the highest bidder was Jaime E. Co, the private complainant in Crim. Case Nos. II-4781 and II-4782. Complainants thus charge herein respondent with oppression, dishonesty, and falsification punishable under Article 171, paragraphs 2 and 4 of the Revised Penal Code.[4]

Respondent denied the charges. He alleged that a public auction sale was actually conducted on May 8, 2003 but that it was held at the Office of the Clerk of Court, MTCC-Santiago City, Branch 2, not at Marilao, Bulacan. Although the sale was first scheduled at the MTCC-Santiago City, he transferred it to the Barangay Hall of Lambakin, Lambakin, Marilao, Bulacan, and then back again to the MTCC-Santiago City, both instances upon the request of Jaime E. Co. Respondent advised complainants about the latest change of venue in a letter dated May 7, 2003[5] which he delivered to complainants' counsel of record, Atty. Edmar C. Cabucana. At the same time, he notified the Barangay Captain of Lambakin, Marilao, Bulacan about the change of venue through two long distance telephone calls, as evidenced by a record of his calls to Bulacan on May 7, 2003 issued by Digital Telecom Philippines, Inc.[6]

Considering the conflicting factual versions presented by the parties, we referred this matter[7] to the Executive

Judge of the Regional Trial Court of Echague, Isabela, for investigation, report and recommendation within sixty (60) days from receipt of the record, in our Resolution dated January 12, 2004.

After conducting investigative hearings, the Investigator[8] submitted his report and recommendation[9] containing the following findings, viz.: that a public auction sale of complainants' properties was actually conducted on May 8, 2003 at the Office of the Clerk of Court, MTCC-Santiago City, Branch 2, not at Marilao, Bulacan; that complainants were not informed of the change of venue; and, that the lone bidder in the sale was indeed Jaime E. Co. The Investigator recommended that the charges of dishonesty, oppression, and falsification be dismissed for lack of merit. Instead, respondent should be held liable for simple misconduct for his failure to give three (3) days' notice in advance of the sale to complainants as required by Section 15, Rule 39 of the Rules of Court for which he should be reprimanded and fined two thousand (P2,000.00) pesos.

The Office of the Court Administrator (OCA) agrees that respondent should be held liable for simple misconduct only, but that he should be suspended for one (1) month instead.

We agree that the charges of dishonesty, oppression and falsification against respondent sheriff be dismissed for lack of merit. However, he committed procedural shortcuts in the conduct of the execution sale of complainants' properties for which he deserves sanction.

Paragraphs (c) and (d), Section 15, Rule 39 of the Rules of Court provide, viz.:

Before the sale of property on execution, notice thereof must be given as follows:

x x x x x x x x

(c) In case of real property, by posting for twenty (20) days in the three (3) public places above-mentioned, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (P50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city.

(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale x x x

The notice shall specify the place, date and exact time of the sale which should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon. The place of the sale may be agreed upon by the parties. In the absence of such agreement, the sale of real property x x x shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court. x x x

Under the foregoing, the following requirements must first be complied with before an execution sale of real property can be conducted, to wit: (1) posting of the notice of sale for twenty days in three public places, preferably in conspicuous places in the municipal or city hall, post office and public market of the municipality or city where the sale is to take place; (2) written notice of the sale to the judgment obligor at least three days before the date of the sale; and, (3) publication of the notice of sale once a week for two consecutive weeks in one newspaper selected by raffle if the assessed value of the property exceeds fifty thousand pesos.

In the case at bar, the Investigator found that respondent substantially complied with the requirement of posting when he posted notices of the sale at the Office of the Mayor, the Municipal Trial Court and at Barangay Lambakin, Marilao, all in Bulacan, on April 3, 2003 regarding the sale to be conducted on May 8, 2003 at the Office of the Clerk of Court-MTCC, Santiago City. However, we do not agree that there was substantial

compliance with par. (c), Sec. 15, Rule 39 of the Rules of Court. Under this provision, the notice of sale required to be posted in three public places must particularly describe the property to be sold and the place where it is to be sold. Although the required twenty days' posting had been complied with with the notice posted on April 3 regarding the sale to be conducted in Santiago City, a confusion was created when respondent transferred the venue of the sale to Marilao, Bulacan. The end result was that prospective bidders to the property like herein complainant Jose Villaceran and his friend Darwin Pascua, were misled into thinking that the sale would be at Bulacan. There was no evidence to show that a notice of sale, transferring back the venue to the Office of the Clerk of Court-MTCC, Santiago City, had been posted for twenty (20) days. The evidence^[10] suggests otherwise considering that respondent received the request of Jaime E. Co for the transfer back of venue to Santiago City only on May 5, 2003. With respect to extrajudicial foreclosure sales of real property, we have ruled that the statutory requirements of posting and publication must be strictly complied with since non-compliance could constitute a jurisdictional defect that would invalidate the sale.^[11] No reason exists not to apply the same principle in the execution sales of real property under Rule 39 of the Rules of Court. In fact, under Sec. 17 of said Rule, an officer selling a property on execution without the notice required in Sec. 15 is liable to pay punitive damages to any person injured thereby as well as actual damages to be recovered in the same action. Considering all the foregoing, we conclude that there was no compliance with the required twenty days' posting in the case at bar.

Second, there was likewise non-compliance with the requirement of three days' notice in advance to the judgment obligor. Although complainants were notified that the auction sale would be held at the Office of the Clerk of Court-MTCC, Santiago City, and then transferred to Marilao, Bulacan, they were not similarly notified of the transfer back of venue to Santiago City. Respondent's contention that he complied with the requirement when he delivered the letter dated May 7, 2003^[12] to complainants' counsel of record, Atty. Edmar C. Cabucana, informing them of the change of venue, deserves no merit. For one thing, the law requires that the written notice be given to the judgment obligor. And even if we were to consider notice to Atty. Cabucana as notice to herein complainants, the letter dated and delivered on May 7, 2003 was still short of the required three days' advance notice. Besides, it is a matter of record that Atty. Cabucana refused to accept delivery of the notice in behalf of complainants and even advised respondent, through his secretary, to deliver it to the complainants instead.^[13] At any rate, respondent seemed aware that the notice ought to have been given to the complainants themselves since his only reason for not doing so was because he was afraid that complainants might detain him again in their home if he did so, like what they did when he first served the writ of execution issued in the criminal cases.^[14] This circumstance, however, should not have deterred respondent from doing his duty. Although there are hazards that come with the implementation of judgments of the court, sheriffs are expected to perform their duties by the book for failure to do so leaves a stain not only on themselves but, more catastrophically, on the office which they hold which lead to the erosion of the people's faith and confidence in the judicial system.^[15] Any method of execution falling short of the requirement of the law deserves reproach and will not be countenanced.^[16]

Third, respondent sheriff changed the venue of the auction sale twice, first from the MTCC-Santiago City to Marilao, Bulacan, and then back again to the MTCC-Santiago City, at the sole instance of Jaime E. Co, the private complainant in the criminal cases, who unilaterally made the requests without the knowledge of herein complainants, much less with their conformity. This is clearly violative of the abovequoted par. (d), Sec. 15, Rule 39, which provides that the venue of the execution sale shall be at the office of the clerk of court of the Regional Trial Court or Municipal Trial Court which issued the writ, in the absence of an agreement by the parties indicating otherwise. We note that the second request for transfer of venue made by Co, whom respondent refers to as the "Manager,"^[17] was made through a letter dated April 30, 2003 which respondent received on May 5, 2003. Notwithstanding the proximity of the auction sale on May 8, 2003, respondent promptly acceded to Co's

request. By doing so, respondent not only failed to comply with the Rules of Court but likewise exposed himself to the suspicion that he might be favoring Co, the private complainant in the criminal cases. All in the Judiciary should be circumspect and proper in the performance of their duties and steer clear of any situation in which the slightest suspicion might be cast on their conduct.[18] Certainly, a sheriff must not give the impression that he is acting as an agent of a party rather than as an officer of the court which he represents.

Both the Investigator and the OCA labeled respondent's administrative offense as simple misconduct. We do not agree. Misconduct in office is any unlawful behavior by a public officer in relation to the duties of his office, willful in character.[19] It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose although it may not necessarily imply corruption or criminal intent.[20]

In the case at bar, there is no evidence to show, and complainants do not even allege, that respondent sheriff was motivated by a premeditated, obstinate or intentional purpose in not complying with the rules. On the contrary, respondent professed ignorance[21] of the three-day notice rule as well as of the rule that the venue of execution sales shall be at the office of the clerk of court of the Regional Trial Court or Municipal Trial Court which issued the writ, in the absence of an agreement by the parties indicating otherwise. Ignorance, however, cannot absolve respondent from administrative liability. While there may have been no evidence or allegation that his acts were tainted with bad faith or malice, respondent nevertheless failed to discharge his duties knowledgeably and competently. Sheriffs are bound to know the basic rules relative to the implementation of writs of execution, and should at all times show a high degree of professionalism in the performance of their duties.[22] Otherwise, the Judiciary would be filled with incompetent personnel acting on their personal beliefs and opinions rather than on established rules and principles of law.[23]

We therefore hold respondent liable for simple neglect of duty only. Neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[24] Herein respondent failed to familiarize himself with the proper procedure regarding the conduct of execution sales under Rule 39 which he is bound to know considering that he has been sheriff since 1997. Simple neglect of duty is a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service and carries with it the penalty of suspension from work for one (1) month and one (1) day to six (6) months, for the first offense and dismissal, for the second.[25] The respondent should be suspended for one (1) month.

IN VIEW WHEREOF, respondent Sheriff III Wilmer M. Beltejar, MTCC-Santiago City, Branch 2, is found GUILTY of Simple Neglect of Duty and SUSPENDED for one (1) month, counted from his receipt of this Decision, with WARNING that a repetition thereof or of similar offenses shall be dealt with more severely.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Complaint dated June 25, 2003, with Annexes; Rollo, pp. 1-10.

[2] Exhibit "A"; Id., pp. 6-7.

[3] Exh. "D"; Id., p. 10.

[4] Article 171. Falsification by public officer, employee or notary or ecclesiastic minister.- The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts: x x x x (2) [c]ausing it to appear that persons have participated in any act or proceeding when they did not in fact so

participate; x x x (4) [m]aking untruthful statements in a narration of facts x x x

[5] Exh. "2"; Rollo, p. 18.

[6] Exh. "3"; Id., p. 20.

[7] Earlier docketed as Administrative Matter OCA IPI No. 03-1693-P.

[8] Judge Bonifacio T. Ong, RTC-Echague, Isabela.

[9] Report dated April 27, 2004.

[10] See Exh. "1"; Rollo, p. 17.

[11] *Cristobal v. Court of Appeals*, 328 SCRA 256 (2000).

[12] *Supra* at Note 5.

[13] TSN, March 30, 2004, p. 32.

[14] Id., p. 35.

[15] *Caja v. Nanquil*, A.M. No. P-04-1885, September 13, 2004.

[16] *Anjum v. Abacahin*, 413 SCRA 261 (2003).

[17] TSN, April 12, 2004, pp. 20-21.

[18] *Nicolas v. Ricafort*, 410 SCRA 25 (2003); *Philippine Bank of Communications v. Torio*, 284 SCRA 67 (1998).

[19] *Guillen v. Constantino*, 282 SCRA 583 (1997).

[20] *Manaois v. Leomo*, 409 SCRA 596 (2003).

[21] TSN, March 30, 2004, p. 43.

[22] *Imperial v. Basilla*, A.M. No. P-04-1852, July 30, 2004.

[23] *Paner v. Torres*, 398 SCRA 381 (2003).

[24] *Villanueva-Fabella v. Lee*, 419 SCRA 440 (2004).

[25] Sec. 52 B(1), Rule IV.

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