

LOURDES SUMALJAG EVANGELISTA, COMPLAINANT, VS. LUISA PENSERGA, RESPONDENT.

A.M. No. P-92-766. March 27, 1995

Ponente: BIDIN, J.

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BIDIN, J.:

Herein complainant was the plaintiff in Civil Case No. 2171 of the MTCC of Ormoc City for unlawful detainer against defendant spouses Jose and Zoila Aguirre. Judgment was rendered by the MTCC of Ormoc City in favor of complainant, ordering the defendant spouses to vacate the subject property (a parcel of land described as Lot 1326 with a house thereon) and to pay complainant the sum of P8,120.00 in accrued rentals. On appeal, the decision of the MTCC was affirmed by the RTC of Ormoc City. Thereafter, the trial court issued a writ of execution on April 28, 1992. The writ was implemented by herein respondent as Clerk of Court IV and Ex-Oficio Sheriff of the MTCC of Ormoc City.

On April 30, 1992, the writ was returned by respondent, who stated in her return that the writ was partially satisfied and that the defendants had already vacated the subject house. In satisfaction of the money judgment, respondent accepted the sum of P100.00 and a promissory note from the defendants/judgment debtors promising to pay P100.00 monthly until the entire amount of P8,120.00 is fully paid. Respondent alleged that she accepted the sum of money and the promissory note from the defendants because she found that none of the movables found in the house where the defendants were staying belonged to them.

When respondent turned over the payment to the complainant, the latter objected to the manner of implementation of the writ, alleging that the same was contrary to the court's judgment, and maintaining that the defendants were still occupying the subject property. Respondent explained that the defendant showed her documents evidencing their granddaughter's title to and ownership of the house they were occupying, as well as their son-in-law's ownership of the movables in the said house.

Complainant filed the instant administrative complaint against respondent for unreasonably refusing to implement the writ of execution in Civil Case No. 2171 alleging among others that the documents referred to by respondent were already considered by the court in the ejectment case.

In a resolution dated June 30, 1994, the Court referred the case for investigation, report and recommendation to the Executive Judge Francisco H. Escano, Jr. of the RTC of Ormoc City, Branch 12.

During the hearing and investigation of the case, a dispute arose as to whether the property owned by complainant included that presently occupied by the Aguirres, the judgment debtors. The parties consented to an ocular inspection of the premises in dispute. Judge Escano appointed the Clerk of Court of the RTC to act as Commissioner to conduct the ocular inspection and submit a report thereon.

The ocular inspection revealed that complainant's lot, Lot No. 1326, is alleged by her to be facing the Agua Dulce Street and from there continues down to the edge of the Malbasag River. The house of the Aguirres stands on an

old abandoned river bed, which respondent claims is public land. While not contesting complainant's claim that the boundary of her property is the Malbasag River, respondent contends that said boundary is only up to the Aguirres' house since the river flowed through and over the land where the Aguirres' house now stands before it changed its course. No one could say with certainty when the river changed its course and whether complainant's lot covers the area down to the present location of the Malbasag River.

The Commissioner refrained from making a pronouncement in his report as to whether the Aguirres' house is inside or outside the property of complainant. He recommended that a surveyor be appointed at the expense of the parties to determine whether the house the Aguirres were occupying at the time the writ was served is on the land of complainant. This recommendation was not acted upon by Executive Judge Escano. The latter in turn submitted a Report to this Court based on the Commissioner's findings and the testimonies of the witnesses of both parties.

In his Report, Judge Escano pointed out that respondent misled the court in making it appear in her return that the defendants had already vacated the house subject of the decision when in fact defendants were still living in the same house standing on the same lot but already renovated by defendant's daughter's common law husband, Raymundo Codilla (Rollo, p. 120).

After a careful examination of the record, We find that no valid reasons exist to warrant respondent's inability to implement the writ insofar as effecting the ejectment of the Aguirres from the disputed house is concerned. Respondent should have continued to implement the writ of execution despite the presence of an alleged claim of a third person on the subject property pursuant to and as provided for in Sections 13, 15 and 17 of Rule 39 of the Rules of Court.

This Court had occasion to rule on the remedies of a third person whose property was seized by a sheriff to answer for the obligation of a judgment debtor. The third party owner may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor (*Sy v. Discaya*, 181 SCRA 382 [1990]). In this particular instance, the said court can determine whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment. The court cannot pass upon the question of title to the property with the character of finality.

Another remedy which the third person may avail of is the remedy known as *terceria* as provided in Section 17, Rule 39 of the Rules of Court. This is done by serving on the officer making the levy an affidavit of his title and a copy thereof upon the judgment creditor. According to the said rule, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be later on brought against the sheriff.

The above mentioned remedies are without prejudice to any proper action that a third-party claimant may deem suitable, to vindicate his claim to the property. This proper action is distinct and separate from that in which the judgment is being enforced (*Ong v. Tating*, 149 SCRA 265 [1987]). Hence, a person other than the judgment debtor who claims ownership or right over levied properties is not precluded from taking other legal remedies to prosecute his claim (*Consolidated Bank and Trust Corp. v. Court of Appeals*, 193 SCRA 158 [1991]).

It did not help that the Aguirres succeeded in utilizing legal processes to have the house they were living in titled in the name of their granddaughter, Jeveline Codilla, and the lot on which it stood transferred to their son-in-law, Raymond Codilla. The latter transfer was effected in March 2, 1992, after the RTC had already affirmed the MTCC's decision in the ejectment case on February 10, 1992.

In its memorandum report dated July 18, 1994, the Office of the Court Administrator noted that the declaration of the house on the abandoned river bed in the name of Jeveline Codilla was made to make it appear that Jeveline was the one who built said house. Likewise the sale from Aguirre to Codilla was done in fraud of creditors. Both the tax declaration of the house in Jeveline Codilla's name and the sale of Jose Aguirre's land to Raymundo Codilla were designed to defeat any judgment rendered against them to pay complainant back rentals up to 1987 (Memorandum, p. 4).

The Office of the Court Administrator further surmises that it is possible that respondent aided and guided the Aguirres in their legal maneuverings so that the judgment in complainant's favor would be rendered ineffectual, but since there is no solid evidence to back up this suspicion, it must remain as such, a mere suspicion.

Meanwhile, respondent's acceptance of the sum of P100.00 as initial payment and a promissory note from the Aguirres in satisfaction of the money judgment is another matter altogether. Respondent acted without and in excess of her official duty in securing such manner of payment from the judgment debtors.

Under the law, respondent was only authorized to do the following: oust the Aguirres from the subject property; place complainant in possession thereof; satisfy back rentals out of the personal properties of the Aguirres, and if personal properties could not be found, satisfy the money judgment out of the real property of the Aguirres, as required by Sections 13 and 15 of Rule 39 of the Rules of Court.

Respondent failed to follow the procedure laid down by the Rules of Court on execution of final judgment. She simply should have filed a return stating why she could not execute the writ of execution instead of entering into the "compromise" with the judgment debtors (the Aguirres), which she is not authorized to do.

Executive Judge Escano also found that respondent asked for and received P500.00 from Anita Sumaljag, complainant's niece, to cover expenses for the enforcement of the writ but without rendering an accounting thereof after the execution. Respondent admitted this fact, and must also be found culpable for the said omission.

It is well settled that the sheriff's duty in the execution of a writ issued by a court is purely ministerial. As stated in the Manual for Clerks of Court, when a writ is placed in the hands of a sheriff, it is his duty in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate. He has no discretion whether to execute it or not (*Young v. Momblan*, 205 SCRA 33 [1992]).

In the present case, respondent's duty was to implement the Writ of Execution. His claim that third persons happen to claim the subject property does not justify his partial enforcement of the writ.

From the foregoing, it is very clear that respondent failed to observe the proper procedures laid down by the Rules on execution of final judgments when the property to be levied upon is claimed by third persons. Instead, she opted to settle issues raised by the alleged third persons/owners of the subject property which is beyond her power to do.

We remind respondent that the conduct and behavior of everyone connected with an office charged with the dispensation of justice from the presiding judge to the lowliest clerk should be circumscribed with the heavy burden of responsibility (*Villamayor v. Cruz, Jr.*, 227 SCRA 239 [1993]). They must faithfully adhere to, hold inviolate and invigorate the oft-stated principle that a public office is a public trust; all public officers and employees must at all times be accountable to the people, and perform their duties and responsibility with care and diligence that the nature of those duties demands (*Re: Judge Enrique T. Jocson*, 227 SCRA 756 [1993]).

As a sheriff, respondent is bound to discharge her duties with prudence, caution and attention which careful men usually exercise in the management of their affairs. The sheriff, an officer of the court upon whom the execution

of a final judgment depends must be circumspect and proper in his behavior (Eduarte v. Ramos, A.M. P-94-1069, November 9, 1994).

WHEREFORE, the Court finds respondent Ex-Officio Sheriff Luisa Penserga guilty of exceeding her authority in enforcing the writ of execution issued in Civil Case No. 2171 and failing to render an accounting of the sum she received for expenses in enforcing the said writ and hereby imposes upon her a FINE in the sum of P5,000.00 with WARNING that commission of the same or similar acts or omissions will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

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