

TEOFILO N. PUGEDA, JR., COMPLAINANT, VS. ALBERT N. NAVALTA, SHERIFF, RESPONDENT.

A.M. No. P-93-828. November 29, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 4 June 1993, complainant Atty. Teofilo N. Pugeda charged respondent Alberto N. Navalta, Sheriff of Regional Trial Court, Branch 119, Pasay City, with abusive, irregular and unlawful conduct in respect of implementation of a writ of execution issued in Civil Case No. 3337, "Traders Royal Bank v. Alco Marine Ventures, Inc., et al."

After respondent Navalta had filed a comment on the complaint as required by the Court, and after complainant Pugeda had submitted a reply to such comment, the Supreme Court referred the matter to Judge Conchita Morales, Executive Judge of the Regional Trial Court of Pasay City for investigation, report and recommendation. However, before Judge Morales could finish the investigation, she was appointed to the Court of Appeals. In her stead, Acting Executive Judge Alfredo Gustilo was assigned by the Court to continue the investigation and to submit a report and recommendation. Hearings were held morning and afternoon on 18, 22, 23, 28 February 1994; 7 March 1994; and 6 May 1994.

In his "Investigation Report" submitted to this Court on 20 January 1995, Judge Gustilo recommended that a fine equivalent to the salary of respondent Sheriff Albert N. Navalta for one (1) month be imposed upon respondent Navalta.

The relevant facts are summarized by Investigating Judge Gustilo in the following manner:

"This administrative complaint was an offshoot of Civil Case No. 3337, Traders Royal Bank vs. Alco Marine Ventures Inc., et al., filed on October 2, 1985, for the collection of the unpaid loan of the defendants, assigned to Branch 119 of the Regional Trial Court of Pasay City, presided over by Judge Aurora P. Navarrete--Reciña. On October 7, 1985, the Court issued a Writ of Preliminary Attachment against the defendants. As a consequence, a vessel of the Alco Marine Ventures, Inc. was levied upon and sold in a public auction. Plaintiff Traders Royal Bank became the highest bidder with a bid of P500,000.00. The proceeds of the sale were retained by the bank under the pretext that they should be applied against the indebtedness admitted by the defendants in their answer.

Subsequently, in an order dated October 10, 1988, the Court dismissed the complaint of the Traders Royal Bank due to lack of interest because of its failure to appear in the pre-trial, and ordered the bank to return the amount of P500,000.00 to the Alco Marine Ventures, Inc. The order of the Court dismissing the complaint was questioned by the Traders Royal Bank in a petition for certiorari. The Court of Appeals sustained the validity of the order. The Supreme Court likewise dismissed for having been filed out of time the petition for certiorari brought by the Traders Royal Bank, impugning the decision of the Court of Appeals sustaining the order of the Regional Trial Court dismissing the case against the Alco Marine Ventures, Inc.

In her order dated May 20, 1993, the Presiding Judge of Branch 119 of the Regional Trial Court of Pasay City

granted the motion for execution dated April 27, 1993, filed by defendant Alco Marine Ventures, Inc., and authorized the issuance of a writ of execution against the Traders Royal Bank for the recovery by defendant Alco Marine Ventures, Inc. of the amount of P500,000.00. On May 27, 1993, pursuant to the Writ of Execution dated May 21, 1993, issued thereunder, respondent Albert N. Navalta, Sheriff IV of Branch 119, levied on the various personal properties of the Traders Royal Bank located at the main office of the bank at the Kanlaon Towers, Roxas Blvd., Pasay City, consisting of several air-conditioning units, copying machines, computers, refrigerators, monitors, printers, motorcycles, electric fans, xerox machines, mimeograph machines, voltage regulators and other pieces of equipment, all with an estimated value of P5,000,000.00. On the same date, respondent Navalta served on the Traders Royal Bank a Notice of Levy and Sale informing it that its attached properties would be sold in a public auction on June 2, 1993, at 10:00 in the morning, at the vicinity of the Kanlaon Towers. A copy of the Notice of Levy and Sale was received by complainant Teofilo Pugeda, Jr., manager of the Legal Department of the Traders Royal Bank.

The respondent also posted copies of the Notice of Levy and Sale at the employees entrance of the bank, at the Mercury Drug Store at Libertad St., Pasay City, and at the ground floor of the Hall of Justice of Pasay City, F.B. Harrison St., Pasay City.

Meanwhile, on November 23, 1992, Branch 114 of the Regional Trial Court of Pasay City, in Civil Case No. 9443, entitled Traders Royal Bank v. Alco Marine Ventures, Inc., et al., handed down an order authorizing the issuance of a writ of preliminary attachment against the properties of the defendants to satisfy the plaintiff's demand. On May 28, 1993, the plaintiff posted an attachment bond. On May 31, 1993, the Branch Clerk of Court of Branch 114 issued a Writ of Preliminary Attachment against the defendants. On June 1, 1993, the Deputy Sheriff of the said Branch served a Notice of Garnishment also dated June 1, 1993, on the Traders Royal Bank, garnishing the 'bank deposit' or 'any amount of money or receivables due belonging to defendant Alco Marine Ventures, Inc.' in the possession of the bank, and advising the bank not to 'deliver/transfer/dispose' of the said deposit, money and receivables.

In the morning of June 2, 1993, before the auction sale of the levied properties of the bank, Atty. Pugeda informed respondent Navalta that a Notice of Garnishment, garnishing the money of the Alco Marine Ventures, Inc. in the possession of the Traders Royal Bank, had been issued by the Deputy Sheriff of Branch 114 of the Regional Trial Court of Pasay City, by virtue of a Writ of Preliminary Attachment dated May 31, 1993, issued by the said Branch in Civil Case No. 9443, Traders Royal Bank v. Alco Marine Ventures, Inc., et al. Pugeda asked Navalta not to proceed with the auction sale of the properties of the Traders Royal Bank. The respondent retorted that he would go on with the sale as there was no restraining order directed against him. Complainant Pugeda then tendered to respondent Navalta Manager's Check No. CAS50639, dated June 2, 1993, for P500,000.00, payable to the Alco Marine Ventures, Inc., issued by the Traders Royal Bank, but the respondent did not accept the check since, according to him, the representative of the Alco Marine Ventures, Inc. wanted cash.

When Navalta was about to start the auction, Bayani Navarro, vice president of the Traders Royal Bank and its representative in the bidding, together with complainant Pugeda, asked permission from the respondent to clear with the president of the bank the limit of the bid to be made by the bank in the public sale of its levied properties. However, before Navarro could return, the respondent had already proceeded with the auction sale where he declared Manolito Roxas as the highest bidder with a bid of P120,000.00. The respondent awarded the bid to Roxas without the bidder actually paying to him the amount of P120,000.00 at the place of the auction sale. Navalta allowed Roxas to make the payment of his bid at the Office of the Clerk of Court of the Regional Trial Court of Pasay City in the Hall of Justice of Pasay City. A Certificate of Sale in favor of Roxas was then issued by the respondent."^[1]

On the basis of the foregoing facts, the Investigating Judge concluded that respondent Navalta had indeed acted in an oppressive manner. The Investigating Judge said:

"In proceeding with the auction sale of the properties of the Traders Royal Bank although he was informed of the issuance of the Writ of Preliminary Attachment and Notice of Garnishment by Branch 114 of the Regional Trial Court of Pasay City, enjoining the bank from releasing any money in its possession belonging to the Alco Marine Ventures, Inc., respondent Navalta acted in the oppressive manner. Prudence would require a consultation by the respondent with the Presiding Judge of Branch 119 as to whether or not he would proceed with the auction sale in the light of the Writ of Preliminary Attachment and the Notice of Garnishment issued by another Branch of the Regional Trial Court of Pasay City.

The respondent likewise acted oppressively when he refused the tender of the manager's check from the bank to prevent the sale of its property. Although they are not legal tender, checks are used as substitute for money in business transactions. It was unreasonable for the respondent not to have accepted the check considering that the amount of money involved was large. Following the position of the respondent, even if the amount of the bid is in millions of pesos, the payment must be made in cash if the prevailing party should so desire. One can just imagine how burdensome and impracticable a public sale would be. In giving way to the demand of the Alco Marine Ventures, Inc. for cash, the respondent exhibited partiality towards the said party.

The respondent should have stopped the sale of the levied properties upon the tender of payment by the Traders Royal Bank of the amount fixed in the Writ of Execution, since at any time before the sale of the properties on execution, the judgment debtor may prevent the sale by paying the amount required by the execution. (Sec. 20, Rule 39, Rules of Court)

It was improper for the respondent to have proceeded with the auction sale in the absence of the representative of the Traders Royal Bank. The purpose of an auction sale is to obtain the highest possible price for the property being sold so as to protect the interest of the debtor. In conducting it without the presence of the representative of the judgment debtor, the respondent effected the auction sale to the prejudice of the Traders Royal Bank. The levied properties of the bank which were to be sold were valued at approximately P5,000,000.00. The highest bid accepted by the respondent was only P120,000.00. This low bid became possible because of the absence of the representative of the bank who could have made a bid higher than P120,000.00. In proceeding with the auction without the representative of the Traders Royal Bank being present, the respondent committed misconduct in the performance of his functions as the Sheriff in charge of conducting a public sale of the attached properties of the bank. Such act also exposed him to a suspicion that the sale was rigged in favor of Roxas.

The respondent also showed favoritism to Roxas by declaring him the highest bidder and awarding the sale to him without his paying at the site of the auction sale the amount of P120,000.00 which was his bid. In considering him as the buyer of the properties auctioned without Roxas having first paid his bid at the place of the sale, the respondent would not be in a position to know whether the purchaser would refuse to pay the amount of his bid, rendering the respondent unable to sell again the property to the highest bidder in the same auction sale should Roxas refuse to pay the amount thereafter. This act of the respondent is repugnant to the rule that if a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property to the highest bidder. (Sec. 22, Rule 39, *ibid.*) The apparent bias of Navalta in favor of Roxas was another basis for the complainant to suspect that there was conspiracy between the respondent and Roxas for the latter to be declared the highest bidder in the said auction sale.

Concerning the conduct of court personnel, the Supreme Court has laid down this guideline:

'Conduct required of court personnel must be beyond reproach and must always be free from suspicion that may taint the judiciary. As this Court once held, "(t)he conduct and behavior of everyone connected with an

office charged with the dispensation of justice, x x x, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His conduct, at all times, must not only be characterized with propriety and decorum but above all else must be above suspicion." Thus, all court personnel are enjoined and required to comport themselves in such manner as to avoid any taint of suspicion being cast on their actuations, official or private.' (Re: Josefina V. Palon, A.M. No. 92-8-027 - S.C., 213 SCRA 219)

The actuations of respondent Navalta as regards the holding of the auction of the properties of the Traders Royal Bank portrayed a departure from the above-prescribed norm of conduct to be observed by those connected with the administration of justice." [2]

The Investigating Judge summed up his conclusions finding respondent Navalta guilty of:

"a.

Oppression, for proceeding with the auction sale of the attached properties of the Traders Royal Bank on June 2, 1993, notwithstanding notice to him of the Writ of Preliminary Attachment and Notice of Garnishment issued by Branch 114 of the Regional Trial Court of Pasay City, prohibiting the bank from disposing of any money belonging to the Alco Marine Ventures, Inc.; and for refusing to accept the manager's check tendered to him by the Traders Royal Bank in payment of the amount determined in the Writ of Execution; and

b.

Misconduct in office, for conducting the auction of the levied properties of the Traders Royal Bank in the absence of the representative of the bank; and for not demanding from Manolito Roxas, the highest bidder, payment of the amount of his bid at the place of the auction sale." [3]

Considering the totality of the acts done by respondent Navalta as reflected in the "Investigation Report" of Judge Gustilo and supported by substantial evidence submitted in the course of the investigation, we agree with the Investigating Judge that respondent Navalta was guilty of oppressive behavior amounting to misconduct in office. Although no restraining order ordering him to cease and desist from carrying out the execution sale had been exhibited to him; complainant Pugeda did inform him of and did show him the writ of preliminary attachment and of the notice of garnishment issued by Branch 114 of the Pasay City Regional Trial Court, a court of coordinate rank with the court which had issued the order authorizing the issuance of a writ of execution against the Traders Royal Bank in Civil Case No. 3337. At the very least, he should have asked the Presiding Judge of Branch 119 of the same Regional Trial Court whether actually carrying out the execution sale, rather than deferring such sale to another date, was proper in view of the writ of preliminary attachment and notice of garnishment issued by Branch 114 of the same Regional Trial Court. He was thus recklessly imprudent in insisting upon holding the execution sale on that very day.

It is true that a Manager's Check is not legal tender and that a judgment creditor cannot be judicially compelled to accept anything other than legal tender in satisfaction of his credit. However, respondent Sheriff in the exercise of his sound discretion was lawfully entitled to accept such a Manager's Check and in the circumstances of this case, his refusal so to accept the Manager's Check tendered by the Traders Royal Bank constituted a serious abuse of that discretion. Acceptance of such a check from a known solvent bank (the offices of Traders Royal Bank were a few meters away from the venue of the auction sale) is in accord with common commercial and governmental practice. The refusal to accept the Manager's Check, combined both with his reckless insistence upon holding the execution sale despite the notice of garnishment issued by Branch 114, and with the haste and dispatch with which the judicial sale was conducted and completed within ten (10) or fifteen (15) minutes after the representatives of Traders Royal Bank had asked for sometime to obtain instructions from the Bank in respect of the amount of the bid that they would submit, showed an intent effectively to prevent the Bank from participating

in the bid. Moreover, the glaring discrepancy between the value of the personal property of the Bank that respondent Sheriff had levied upon and sold at the public sale, i.e., P5,000,000.00 (to enforce a judgment for the amount of P500,000.00) and the winning bid of P120,000.00 submitted by one Manolito Roxas, inevitably created strong suspicion that respondent Navalta meant to favor bidder Roxas. The bid was less than 2.5% of the estimated value of the properties levied upon, and less than 25% of the amount of the judgment credit. This suspicion was aggravated when respondent Navalta did not require the winning bidder to pay for his bid in cash then and there at the time of the sale. Instead, the winning bidder went to the Office of the Branch 114 Clerk of Court and there he paid the amount of his bid later in the day.

Given the nature of a sheriff's duties in respect of the sale of goods at public auction in case of execution, it is important that sheriffs refrain from any conduct that may reasonably give rise to the belief on the part of the judgment debtor that the auction sale has been rigged to favor a particular bidder to the prejudice of the judgment debtor. The sheriff must be cautious and scrupulously objective and fair in the conduct of an auction sale. He should give the judgment debtor a real and effective opportunity to protect himself by bidding for the property levied upon. Respondent Navalta fell too far short of the foregoing standards.

ACCORDINGLY, in line with the recommendation of Investigating Judge Alfredo Gustilo, respondent Sheriff Albert N. Navalta is found guilty of oppressive behavior amounting to misconduct in office and is hereby REQUIRED to pay a fine in the amount of Six Thousand Pesos (P6,000.00). Respondent Navalta is also WARNED that commission of the same or similar offense in the future will be more severely dealt with. A copy of this Resolution shall be spread on the personnel record of respondent.

Romero, Melo, Vitug, and Panganiban, JJ., concur.

[1] "Investigation Report" of Acting Executive Judge Alfredo J. Gustilo, pp. 27-30.

[2] *Id.*, pp. 30-33.

[3] *Id.*, p. 35.

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