

**FLORENTINO A. CAJA, PETITIONER, VS. ATILANO G. NANQUIL,
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 72, OLONGAPO CITY,
RESPONDENT.**

A.M. No. P-04-1885 (Formerly OCA-IPI-01-1184-P). September 13, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before us is a complaint for Grave Misconduct and Gross Ignorance of the Rules on Execution under the Rules of Court against Atilano G. Nanquil, Sheriff IV, Regional Trial Court, Branch 72, Olongapo City.

Complainant Florentino A. Caja was a defendant in Civil Case No. 182-0-96 entitled “Triangle Ace Corporation, Rep. by its General Manager, Mr. David J. Sagun versus Subic Realty Corporation, Florentino Caja and Erickson Y. Caja”[1] for Sum of Money before Branch 72 of the Regional Trial Court of Olongapo City.

On November 19, 1996, Judge Eliodoro G. Ubiadas rendered a decision in Civil Case No. 182-0-96, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendants to pay the plaintiff jointly and solidarily the amount of P956,285.00 with interest at the rate of 18% per annum from April 27, 1995, plus the amount of ten (10%) percent of the amount as attorney’s fees plus costs of the suit.[2]

On February 12, 1997, a Writ of Execution,[3] addressed to Sheriff Nanquil, was issued.

On February 27, 1997, Sheriff Nanquil sent a Notice of Garnishment to the Manager of PAG-IBIG (Take-Out Office) informing the latter not to deliver, transfer or dispose defendants’ money, credits, shares, interests and deposits therein except upon orders from the court.[4] In the Answer to Notice of Garnishment dated March 3, 1997, Daisy R. Roldan, Head, Mortgage Take-Out Center, NCR-I, stated that they will hold on to the account of one Edgar Ballesteros (P157,500.00).[5]

On May 19, 1997, per Sheriff’s Return, the Writ of Execution was returned unsatisfied.[6] Hence, an Alias Writ of Execution was subsequently issued on May 19, 1997.[7]

Per Notice of Levy dated May 19, 1997, Sheriff Nanquil levied a parcel of land covered by Transfer Certificate of Title No. T-46478, including its improvements, declared in the name of Subic Realty Corporation under Tax Declaration No. 010-1356 with a total assessed value of P1,786,870.00.[8]

On July 1, 1997, Sheriff Nanquil levied the following personal properties of defendants:

- One Payloader, 75 B Michigan,
TCM Engine No. PD6-072064
- One Dump Truck
Chassis No. CXZ 19J-1992977
Color – Blue[9]

On the same date, he issued an Additional Notice of Levy for seventy-seven (77) pieces of G.I. Sheets (gauge 26 by 7 feet).[10]

On July 8, 1997, a Notice of Third Party Claim was filed by Antero T. Dominguez, Account Officer of the Marketing Department of BAP Credit Guaranty Corporation (BCGC), before Branch 72 of Regional Trial Court of Olongapo City, informing its sheriff, that the payloader and dump truck he levied were previously mortgaged to BCGC. He requested that the levy thereon be immediately lifted and/or discharged in accordance with Section 17, Rule 39 of the Revised Rules of Court.[11]

Third Party Claimant BCGC filed an Urgent Motion to Lift Writ of Attachment dated December 15, 1997 praying that the writ be lifted and aforesaid levied equipment be delivered to it so it can foreclose the same.[12] On December 17, 1997, plaintiff Triangle Ace Corporation filed a Motion to Strike Out Motion to Lift Writ of Attachment.[13]

On May 7, 1998, Judge Ubiadas denied the Urgent Motion to Lift Writ of Attachment[14] to which Third Party Claimant BCGC filed a Motion for Reconsideration.[15] Plaintiff moved to strike out said motion which Third Party Claimant BCGC opposed.[16]

In an Order dated November 27, 1998, Judge Ubiadas granted plaintiff's motion to strike out the Motion for Reconsideration.[17]

On January 18, 2000, defendants Subic Realty Corporation, Florentino Caja and Erickson Y. Caja filed a Motion to Lift Levy on Execution praying that the levy on their real property made on May 19, 1997 be lifted on the ground that the levy made on their personal properties is sufficient to satisfy the judgment. They likewise asked the lower court to direct the sheriff to conduct the appropriate execution sale.[18]

On March 6, 2001, Judge Ubiadas denied the Motion to Lift Levy arguing that it cannot be determined at that time if the amount levied is way above the amount necessary to satisfy the judgment creditor. He further ordered Sheriff Nanquil to immediately schedule the auction sale of defendants' real and personal properties that were levied in accordance with the writ of execution.[19]

On April 26, 2001, the Office of Acting Court Administrator Zenaida N. Elepaño received the complaint at bar dated April 10, 2001 filed by Florentino A. Caja against Sheriff Nanquil. The complaint alleged, among others things, the following:

Sometime on May 19, 1997, Sheriff Atilano Nanquil issued a Notice of Levy of the real property owned by Subic Realty Corporation (the undersigned as the President) with an assessed value of PhP1,786,870.00. Again, on July 1, 1997, the same Sheriff issued a Notice of Levy on the personal properties of the defendant Subic Realty Corporation with assessed value fixed at PhP2,900,000.00.

Under the Rules of Civil Procedure particularly in execution, the sheriff in making the levy must only levy as is sufficient to satisfy the judgment but not beyond what is stated therein. In the instant case, there was an "over levy" made by Sheriff Nanquil in utter disregard of the rules.

x x x x x x x x

After the levy on the properties of the judgment debtor, the Sheriff must deliver the same to the court for execution sale. However, in the instant case, the properties levied by Sheriff Nanquil on execution were delivered directly to the judgment creditor (plaintiff Triangle Ace Corporation) without conducting the auction sale as provided in Rule 39, Section 19 of the Rules of Civil Procedure.

Moreover, Sheriff Nanquil, in violation of Section 9(b) of Rule 39 of the Rules of Civil Procedure, which

states:

x x x If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties were insufficient to answer for the judgment.[20]

On April 30, 2001, Deputy Court Administrator Jose P. Perez indorsed the complaint to Sheriff Nanquil requiring him to submit his comment thereon within ten days from receipt thereof.[21]

On May 23, 2001, Sheriff Nanquil issued a Notice of Sheriff's Sale announcing that on June 14, 2001, at 10 a.m., in front of the Hall of Justice, West Bajac-Bajac, Olongapo City, he would be selling at public auction to the highest bidder and for cash, the following levied properties:

- One Payloader, 75 B Michigan, TCM
Engine No. PD6-072064

- One Dump Truck
Chassis No. CXZ 19J-1992977

- 77 pieces of G.I. sheets
Gauge – 26 x 7 feet[22]

On the same date, Judge Ubiadas forwarded to Deputy Court Administrator Perez the Comment of Sheriff Nanquil.[23] It reads in part:

2) The complaint against the undersigned arose out of Civil Case No. 182-0-96 entitled "Triangle Ace Corp., represented by its General Manager, Mr. David J. Sagun vs. Subic Realty Corporation, Florentino Caja and Erickson Caja" which was raffled, heard and decided by this Court (RTC Br. 72);

3) That on May 29, 1996, a Writ of Attachment was issued in said case upon hearing of the application for its issuance and the filing of attachment bond which was approved by this Court;

4) Hence, on July 11, 1996, a Notice of Levy was made on the following which were undergoing overhauling, to wit:

- STD 25 Payloader DA 220-15420
Serial No. 6202641; and

- D-80 Bulldozer – Komatsu
Serial No. 19836

Attached herewith to form an integral part of this Comment is a copy of the Notice of Levy and marked as Annex "A";

5) Thereafter, the Decision was issued on November 19, 1996 and a Writ of Execution was received by the undersigned on February 17, 1997 where a Notice of Garnishment was issued to the Manager, Pag-ibig (Take out Office, Atrium Bldg., Makati Avenue, Makati City) and the Answer to the same was received on April 2, 1997 amounting only to P157,500.00 in the account of Edgar Ballesteros being held therein and marked as Annexes "B" and "C," respectively;

6) Diligent efforts have been exerted to locate other personal properties but in vain;

7) Considering that the lifetime then of the Writ of Execution was Sixty (60) Days from his receipt, undersigned made a return for the same on May 19, 1997;

8) On May 19, 1997, an Alias Writ of Execution was issued upon motion of the plaintiff;

9) That on May 19, 1997 undersigned has levied the real property of the defendant relative to the Alias Writ of Execution issued in Civil Case No. 182-0-96, a copy of which is hereto attached together with a copy of the Notice of Levy which was duly registered with the Office of the Register of Deeds of Zambales and marked as Annexes “D” and “D-1,” respectively;

10) That undersigned levied the aforesaid real property instead of the personal properties for the reason that undersigned Sheriff could not find any attachable personal properties of the defendants enough to satisfy the judgment debt despite diligent efforts exerted;

11) Thereafter, an information was relayed that the defendants still have other personal property, hence, on July 1, 1997, undersigned levied the personal properties of the defendants consisting of one Payloader, one Dump Truck and 77 G.I. sheets gauge 26 x 7 feet, a copy of the Notices of Levy are hereto attached and marked as Annexes “E” and “E-1”;

12) The undersigned kept the said equipments (sic) in a vacant lot owned by the plaintiff considering that there is no available place in the Hall of Justice of Olongapo City neither in any other place in Olongapo City that would not be exposed to elements; likewise, this was with the knowledge and consent of the defendants but no complaint was made;

13) That it was only on March 6, 2001 that the Court ordered the immediate sale of the properties levied to determine [whether] the proceeds of sale is enough to satisfy the judgment; a copy of the Order is attached as Annex “F” hereof;

14) That undersigned has scheduled the auction sale of the above-mentioned equipments (sic) on June 14, 2001, a copy of the Notice of Sheriff’s Sale is hereto attached and marked as Annex “G”;

15) That undersigned did not include the real property in the auction sale as the same is mortgaged with a certain bank in Bulacan according to the Register of Deeds of Zambales in the amount of P10,000,000.00.[24]

On June 14, 2001, the levied personal properties were sold at public auction with judgment creditor Triangle Ace Corporation declared as the highest bidder for P705,500.00 (P350,000.00 – payloader; P350,000.00 – dumptruck; G.I. sheets & \$150; P5,500.00). By way of a Certificate of Sale, said personal properties were transferred, ceded and conveyed to Triangle Ace Corporation. The amount of P705,500.00 was not paid to respondent sheriff since the same did not exceed the total obligation of judgment debtors.[25]

On July 26, 2002, Court Administrator Presbitero J. Velasco, Jr. submitted a report on the investigation of the complaint where he recommended that the Initial Preliminary Investigation be dismissed for lack of merit.[26]

On August 26, 2002, this Court required complainant Caja to file his reply to respondent sheriff’s comment.[27] The Reply was received on October 7, 2002.[28]

On November 11, 2002, We referred the administrative matter to the Executive Judge of Olongapo City for investigation, report and recommendation.[29]

Per manifestation of complainant Caja that respondent Nanquil is assigned to the Judge to whom the investigation of the complaint was referred to, the Court revoked the designation of said judge as investigator, and referred the case to Judge Avelino A. Lazo of Branch 75, Regional Trial Court, Olongapo City for investigation, report and recommendation.[30]

As required by the Investigating Judge, complainant and respondent filed their respective position papers.[31]

Complainant Florentino Caja and Hipolito Erickson Caja testified before the Investigating Judge.[32] For the defense, respondent Nanquil took the witness stand, together with John Aquino.[33]

After the parties concluded the presentation of their evidence, they filed their respective memoranda.[34]

On October 9, 2003, the Investigating Judge forwarded to this Court the resolution and entire record of the proceedings. In his resolution, he recommended that the administrative complaint against respondent sheriff be dismissed for lack of merit.[35]

We referred the report of Judge Lazo to the Office of the Court Administrator for evaluation, report and recommendation.[36] In his memorandum to Associate Justice Reynato S. Puno, the Court Administrator recommended the dismissal of the administrative complaint against respondent sheriff.[37]

Complainant alleged that respondent sheriff committed the following irregularities amounting to Gross Misconduct:

- Respondent sheriff levied defendants' real property ahead of their personal properties;
- Respondent sheriff made an excessive levy;
- Respondent sheriff levied defendants' personal properties without serving a Notice of Levy or issuing a receipt therefor;
- Respondent sheriff delivered the levied personal properties to the judgment creditor without conducting an auction sale; and
- Respondent sold the levied personal properties in an auction sale almost four years after being levied. [38]

Complainant contends that respondent sheriff levied his real property ahead of his personal properties as shown by the Notice of Levy on his real property dated May 19, 1997, and Notice of Levy and Additional Notice of Levy on his personal properties both dated July 1, 1997, in violation of the Alias Writ of Execution and Section 9(b) of Rule 39[39] of the Revised Rules of Court.

In answer thereto, respondent admitted that he first levied real property under TCT No. T-46478 but since the same was heavily mortgaged for P5,000,000.00, the judgment creditor, Triangle Ace Corporation, desisted from proceeding with the levy. It was because of this that he levied the personal properties consisting of the payloader, dump truck and G.I. sheets. He maintains that his action was in accordance with Section 9(b) of the New Rules of Civil Procedure which states that "the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed for value and not otherwise exempt from execution." He added that although the aforesaid section provides that "the officer shall first levy on the personal properties, if any, then on the real properties if the personal properties are insufficient to answer the judgment," this section has been nullified by the succeeding paragraph which says "(w)hen there is more property of the judgment obligor that is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees."

At the outset, it must be determined whether or not the 1997 Rules of Civil Procedure which took effect on July 1, 1997[40] applies to the case at bar. From the record of the case, it is apparent that respondent sheriff, after Judge Eliodoro G. Ubiadas rendered his decision in Civil Case No. 182-0-96 on November 19, 1996, issued a Notice of Garnishment dated February 27, 1997 and a Notice of Levy on real property dated May 19, 1997. Thereafter, on July 1, 1997, he issued a Notice of Levy and an Additional Notice of Levy on personal properties.

The Rules of Court shall govern all cases brought after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply.[41] Inasmuch as respondent sheriff started levying the properties of complainant before the effectivity of the 1997 Rules of Civil Procedure, and considering

further that the provision he is invoking was inexistent then, it is only proper to apply the rules prevailing when he began levying complainant's properties. To do otherwise would create unfairness and cause inequity in the application of the rules.

Since the case stemmed from the final judgment of the lower court in a collection case, the pertinent rules are the provisions of the Rules of Court regarding writs of execution and execution of money judgments.

Section 8 of Rule 39 deals with the issuance, form and contents of a writ of execution. Said section reads:

Sec. 8. Issuance, form and contents of a writ of execution --- The writ of execution must issue in the name of the Republic of the Philippines from the court in which the judgment or order is entered; must intelligently refer to such judgment or order, stating the court, province, and municipality where it is of record, and the amount actually due thereon if it be for money; and must require the sheriff or other proper officer to whom it is directed substantially as follows:

(a) If the execution be against the property of the judgment debtor, to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; x x x. (underscoring supplied)

Section 15 of Rule 39 provides the manner by which the execution of a money judgment must be enforced:

Sec. 15. Execution of money judgments. --- The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment.

It is clear in Section 8(a) of Rule 39 that satisfaction of the judgment must be carried out first through the personal property of the judgment debtor, and then through his real property. This directive is evident from the Writ of Execution and Alias Writ of Execution issued by the Regional Trial Court which reads:

NOW THEREFORE, you are hereby commanded to order the defendants to pay the plaintiff jointly and solidarily the amount of P956,285.00 with interest at the rate of 18% per annum from April 27, 1995, plus the amount of ten (10%) percent of the amount as attorney's fees plus costs of the suit and in default of such payment, you cause to be made said sum out of the goods and chattels of the defendants aside from your lawful fees.

BUT, if sufficient personal properties cannot be found, then you are commanded that of the lands and buildings of the defendants, you cause to be made the said sum in the manner required for by the Rules of Court and make return of this writ within sixty (60) days together with your proceedings indorsed thereon.[42]

Going over the record of the case, it appears that after the decision of the lower court became final and a writ of execution was issued, the first thing respondent sheriff did was to serve a Notice of Garnishment to the Manager of PAG-IBIG (Take-Out Office) advising the latter not to deliver, transfer or dispose of money credits, shares, interests, and deposits in his control and possession belonging to Subic Realty Corporation, Florentino Caja and Erickson Y. Caja.[43] Subsequently, an alias writ of execution was issued and pursuant thereto, he levied the real

property of complainant on May 19, 1997 and then the latter's personal properties on July 1, 1997.

Clearly, what respondent sheriff levied first was personal property via garnishment. Garnishment is considered as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation.[44] It involves money, stocks, credits, and other incorporeal property which belong to the party but is in the possession or under the control of a third person.[45] Since the properties involved in garnishment are personal properties, garnishment is thus a levy on personal property.

We, however, find that respondent sheriff still violated the rule that satisfaction of the judgment must be carried out first through the personal property of the judgment debtor, and then through his real property. After levying the real property of complainant, respondent sheriff then levied complainant's personal properties which is a direct violation of Section 8, Rule 39 and of the writ and alias writ of execution issued by the court.

Respondent sheriff's contention that he levied the personal properties of complainant after the judgment creditor "desisted from proceeding with the levy" on the real property when it was discovered that the real property he previously levied was already mortgaged for P5,000,000.00, cannot give him any relief.

First, there was negligence on his part when he immediately levied the real property of complainant without checking if the latter has other personal properties that could satisfy the judgment. He could have easily asked the Land Transportation Office if complainant had vehicles registered in his name. If he had done so, respondent sheriff could have known that complainant had vehicles which he could levy first before levying any real property. He should have exhausted all means before going after the real property. This, he did not do. It was only after levying complainant's real property and after discovering that said property was encumbered did he look for other personal property.

Second, the claim that the judgment creditor desisted from proceeding with the levy on the real property is no excuse. The levy on complainant's real property was already effected and annotated as shown by Entry No. 122714 in TCT No. T-46478. It was the sale of the real property in an execution sale which the judgment creditor did not insist on because the same was already mortgaged for P10,000,000.00 in favor of Town Savings and Loan Bank of Bulacan per Entry No. 121262.[46]

Complainant further accuses respondent of making an excessive levy. The decision, he said, calls only for the payment of P956,285.00 with interest at the rate of 18% per annum from April 27, 1995 plus ten (10%) percent of the amount as attorney's fees plus costs of the suit, but respondent levied properties totaling almost five million pesos which is an amount over and above the judgment debt to be satisfied. He alleged that the personal properties respondent levied have an amount of more than three million pesos,[47] and the real property had an assessed value of P1,786,870.00 and is mortgaged for ten million pesos.[48] He added that respondent sheriff was offered other real properties which are smaller in value and not encumbered but he insisted on levying the real property which has a conservative assessed value of double the amount to be satisfied.

Respondent sheriff countered that, anyway, the levy on the real property was not continued because the property was "heavily indebted at five million pesos." As to the levy on the personal properties, he alleged that same cannot be excessive because their acquisition cost is not the price in an auction sale, the latter being much lower than the former.

As stated in the second paragraph of the aforecited section, the manner by which a levy on execution is to be effected is the same as that under a writ of attachment. Section 7 of Rule 57 illustrates how a property is attached:

Sec. 7. Attachment of real and personal property; recording thereof. --- Properties shall be attached by the officer executing the order in the following manner:

a) Real property, or growing crops thereon, standing upon the records of the registrar of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, by filing with the registrar of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any there be. Where the property has been brought under the operation of the Land Registration Act, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. The registrar must index attachments filed under this paragraph in the names both of the applicant and the adverse party.

x x x x x x x x

(c) Personal property capable of manual delivery, by taking and safely keeping it in his capacity, after issuing the corresponding receipt therefor; x x x.

We find respondent sheriff's contention that "the levy on complainant's real property was not continued" because it was previously mortgaged to be untenable. The levy thereon was completed as shown by the annotation (Entry No. 122714) of the Notice of Levy on Transfer Certificate of Title No. T-46478. In fact, complainant, together with the other defendants in Civil Case No. 182-0-96, filed a Motion to Lift Levy on Execution dated January 18, 2000 asking that the levy on the real property be lifted because the levy on the personal properties was sufficient to satisfy the judgment debt. Unfortunately, the motion was denied by the lower court. It is clear that the levy on the real property is still subsisting. There was a valid levy on the real property. Thus, it is improper for respondent sheriff to rely, as a defense, on his claim that the levy on the real property was not continued. It was the sale of the levied real property in an execution sale which did not push through.

Levy is different from an execution sale. Levy has been defined as the act or acts by which an officer sets apart or appropriates a part or the whole of a judgment debtor's property for the purpose of satisfying the command of the writ of execution.[49] On the other hand, an execution sale is a sale by a sheriff or other ministerial officer under the authority of a writ of execution which he has levied on property of the debtor.[50] In the case before us, there was a levy on real property but the levied property was not sold in an execution sale because said property, if sold, will not satisfy the judgment debt because of an existing encumbrance thereon.

There being a levy on the complainant's real property, the amount thereof must be considered in determining if there was an overlevy. As gathered from the Tax Declaration of the real property involved, including its improvements, its assessed value amounted to P1,786,870.00. It must be remembered, however, that said property is mortgaged for P10,000,000.00 in favor of Town Savings and Loan Bank of Bulacan. The fact that the property is mortgaged for ten million pesos only means that its value is more than said amount. This Court takes judicial notice of the fact that the value of a property is usually bigger than the amount for which it can be mortgaged. No person, in the ordinary course of business, would give a loan which is bigger than the value of the property that is used to secure such debt. Certainly, the issue of what is bigger -- the amount of the loan or the amount of the security for its payment -- is within public knowledge and capable of unquestionable demonstration.[51]

The amount of the real property levied upon is definitely more than ten million pesos since the property was mortgaged for ten million. This amount alone is more or less ten times greater than the judgment debt. As it is, there is already a clear case of overlevy. Although the levied realty was not auctioned at an execution sale, its value should still be taken into account in computing the total amount levied by respondent sheriff.

Respondent sheriff's act of levying complainant's real property despite its being mortgaged is tantamount to negligence. As an officer of the court, he knew fully well that the property cannot be used to satisfy the judgment debt since the mortgagee is the preferred creditor in relation to said property.

Anent the levy on the complainant's personal properties, he avers that respondent made an overlevy since the value of the payloader and the dumptruck amounted to three million pesos which is over and above the judgment debt.

In the determination of the value of the two vehicles, it is the duty of complainant to show their true value as substantiated by competent proof. In the case before us, complainant failed to present the best proof to accurately show their value. He should have adduced in evidence the deeds of sale of said vehicles, but instead, he merely presented the invoices and delivery receipts. These pieces of evidence are not sufficient to prove the value of these properties as claimed by complainant considering that when the same, together with the G.I. sheets, were sold in public auction, the bid amounted only to P705,500.00 which is way below the judgment debt.

The rule is well-settled that a sheriff is guilty of misconduct where he failed to limit the goods to be levied to the amount called for in the writ.[52] A deputy sheriff who made a levy far and in excess of the value of the judgment commits a misconduct in office.[53] In the case before us, respondent sheriff clearly made an excessive levy when he levied complainant's real property which was valued at more than ten million pesos (P10,000,000.00).

Complainant accuses respondent sheriff of surreptitiously taking the personal properties on July 1, 1997 without serving any Notice of Levy or issuing any receipt for the same.

Respondent sheriff maintains that the Notice of Levy was not given to complainant or to anybody at the place where the personal properties were taken because nobody would receive it. He added that complainant knew where they were taken. Moreover, he said, despite meeting complainant several times, the latter neither complained to him about the levy nor filed any complaint in court.

As regards the notice of levy for the payloader and dump truck, respondent testified as follows:

ATTY. CESA

Q

Let us go to this Notice of Levy on the payloader and dumptruck. When you made the levy on the payloader and the dumptruck, you issued a notice of levy as brought out by the evidence?

A

Yes, sir.

Q

Did you, as a matter of procedure or practice leave a copy of the notice of levy before taking possession of the payloader and dumptruck?

A

This is [the] usual practice, but at the time I was trying to leave a copy to the son of the complainant here, they were shouting at me and they told me I will have to wait for their brother.

Q

What did you do insofar as serving to them the notice of levy was concerned?

A

I proceeded in the taking of the units.

Q

Did you leave a copy of the notice of levy inspite of the fact that they refused to accept it?

ATTY. LOBIGAS

Objection, Leading.

ATTY. CESA

Anyway, this is only . . .

COURT

Preliminary. You can cross examine him.

ATTY. CESA (to witness)

Q

Did you leave a copy of the notice of levy?

A

I could not exactly remember if they have accepted it because I just showed him the notice of levy; that they don't want to get near of me and because I was prevented in the taking away of . . .

COURT

The question is very simple.

(to witness)

Q

Did you leave or did you not, a copy of the notice of levy to the party who was there?

A

I could not remember anymore.[54]

Respondent sheriff's answer that he cannot remember if he did leave a copy of the Notice of Levy with the judgment debtor only shows that he was not performing his duty as sheriff. As sheriff, it was his duty to give the notice of levy or receipt to the person to whom the personal properties were taken. If no one would like to receive the same, it was his duty to leave copies of the notice at the place where he levied the personal property. Thereafter, he should have reported the proceedings by filing a report or return to the court. In the case at bar, even assuming that no one was willing to accept the notice of levy, the record is bereft of any evidence showing that respondent sheriff reported his failure to leave a copy of the notice of levy. Sheriffs are officers of the court who serve and execute writs addressed to them by the court, and who prepare and submit returns of their proceedings.[55] On this score, respondent was again remiss in his duty as a sheriff.

Complainant claims that respondent sheriff delivered the heavy equipment and G.I. sheets to the judgment creditor without conducting an auction sale which is in contravention of the Alias Writ of Execution and a violation of Section 9(b), Rule 39 of the Rules of Court.

Respondent sheriff argues that he never delivered said personal properties to the judgment creditor but merely kept the same in a secured place owned by the latter. He brought them there because the Sheriff's Office and the Regional Trial Court of Olongapo City had no warehouse or place to keep levied personal properties. In support thereto, he presented John Aquino, Clerk of Court of the Regional Trial Court of Olongapo City, who testified that they have no designated warehouse or building where sheriffs can keep levied personal properties. In so far as large motor vehicles, the practice as to where to keep them is left at the discretion of the sheriff.[56]

Respondent sheriff's argument that he kept the levied personal properties at the judgment creditor's place because the Regional Trial Court of Olongapo City does not have any warehouse or place to keep the same does not hold water. A levying officer must keep the levied properties securely in his custody. The levied property must be in the substantial presence and possession of the levying officer who cannot act as special deputy of any party litigant.[57] They should not have been delivered to any of the parties[58] or their representative.[59] The court's lack of storage facility to house the attached properties is no justification.[60] Respondent sheriff could have deposited the same in a bonded warehouse[61] or could have sought prior authorization from the court that issued the writ of execution.[62]

In the case at bench, respondent sheriff brought the personal properties he levied directly to the vacant lot of Triangle Ace Corporation, plaintiff in Civil Case No. 182-0-96, in violation of the rule requiring him to safely keep them in his capacity, after issuing the corresponding receipt therefor.[63] There is nothing in the record that shows that prior to his delivery of the levied properties to Triangle Ace Corporation, he sought permission of the court that issued the writ he enforced to keep the properties.

Furthermore, Erickson Caja said he once saw the levied dumptruck being used in hauling desilted materials from the Kalaklan River in Olongapo City.[64] This claim was buttressed by BCGC in its Urgent Motion to Lift Writ of Attachment when it said:

5. Also on December 10, 1997, an ocular inspection was made on the premises of Plaintiff, located along Magsaysay Ave., Olongapo City, where the subject dumptruck and payloader were temporarily stored, however, the truck and payloader were not there. Inquiries were made but no satisfactory explanation nor answer were elicited from Sheriff Atilano G. Nanquil, the Sheriff-in-charge and/or from Mr. David J. Sagun, the Plaintiff's General Manager.[65]

From these, it is apparent that respondent sheriff was again imprudent in his duty in safekeeping the properties he levied. In delivering the levied personal properties to the judgment creditor, he allowed others to use them before they can be sold in a public auction. In allowing the levied properties to be used is evidence that he had not taken care of, and safely kept, them in his substantial presence, possession and control.

Respondent sheriff's contention that complainant has not presented evidence that the levied properties sustained damages in the judgment creditor's vacant lot cannot legalize an act which is contrary to the Rules and to the writ of execution. The fact that he delivered the levied personal properties in judgment creditor's vacant lot is already a contravention of the Rules and of the writ of execution.

Respondent sheriff faults complainant for not complaining before the lower court on the alleged excessiveness of the levy, his failure to serve or leave a notice of levy, and the manner of safekeeping the levied properties.

The failure of complainant to lodge a complaint before the lower court will not justify respondent's improper actions. It is incumbent upon the latter to know that his actions were not in accord with the Rules of Court. The non-filing of a complaint will not validate his objectionable actions.

The last irregularity complainant claims that respondent sheriff committed was it took the latter almost four years from the time he levied the personal properties on July 1, 1997 to schedule the auction sale thereof, causing the chattels to deteriorate greatly in value.

Respondent sheriff retorted that the sale was authorized by the court through its order dated March 8, 2001. He said he deferred his action in consultation with the court and that the court was aware of the situation of the levied properties. We sustain him in this aspect.

The delay of the scheduling of the auction sale cannot be attributed to respondent sheriff. There were pending incidents that had to be resolved by the court before the execution sale can be held. After the personal properties were levied on July 1, 1997, a Notice of Third Party Claim was filed by BCGC on July 8, 1997. Thereafter, BCGC filed an Urgent Motion to Lift Writ of Attachment dated December 15, 1997 which Judge Ubiadas denied on May 7, 1998. A Motion for Reconsideration was filed but the same was stricken off the record per order dated November 27, 1998 upon motion of plaintiff Triangle Ace Corporation. On January 18, 2000, defendants Subic Realty Corporation, Florentino Caja and Erickson Y. Caja filed a Motion to Lift Levy on Execution which motion Judge Ubiadas denied on March 6, 2001. In said order, Sheriff Nanquil was ordered to immediately schedule the auction sale of defendants' levied real and personal properties. From the foregoing, respondent sheriff cannot be

held liable for any delay of the scheduling of the execution sale for he merely waited for the judge to rule on matters relative to the properties he had levied.

A public office is a public trust. All public officers and employees must, at all times, be accountable to the people. They ought to perform their duties with utmost responsibility, integrity, competence, and loyalty, and with patriotism and justice, lead modest lives, and uphold public interest over personal interest.[66] Every officer and man of the judiciary is expected to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to conduct themselves with propriety and decorum at all times.[67]

Sheriffs play an important role in the administration of justice and they should always hold inviolate and invigorate the tenet that a public office is a public trust.[68] Being in the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court.[69] By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion.[70] Sheriffs cannot afford to err in serving court writs and processes and in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.[71]

It is undisputable that the most difficult phase of any proceeding is the execution of judgment.[72] The officer charged with this delicate task is the sheriff. Despite being exposed to hazards that come with the implementation of the judgment, the sheriff must perform his duties by the book. Respondent Nanquil failed to perform what was expected of him. As above discussed, his negligence in the discharge of his duties and his failure to strictly comply with the provisions of the Rules of Court have left a stain not only on himself but more importantly in the office he holds which may lead to the erosion of the people's faith and confidence in the judicial system.

In a number of cases,[73] this Court imposed the penalty of dismissal on sheriffs found guilty of grave misconduct. Considering that the respondent had spent the best years of his life in the Government Service – he has been in the service for more than thirty-five (35) years, and is about to retire – and considering further that the offense he committed appears to be his first, the Court is inclined to grant him certain leniency without, nonetheless, being unmindful of the fact that he had breached the provisions of the Rules of Court. For this reason, the Court is wont to impose the penalty of suspension of six (6) months, without pay. However, since respondent sheriff will be compulsorily retiring this year,[74] the penalty imposed can no longer be fully served. Thus, the Court resolves, in lieu of the suspension, to impose a fine equivalent to his six (6) months salary or Seventy-Nine Thousand Six Hundred Forty-Four (P79,644.00) Pesos,[75] the same to be deducted from his retirement benefits.

WHEREFORE, respondent Atilano G. Nanquil, Sheriff IV, Regional Trial Court, Branch 72, Olongapo City, is found GUILTY of Gross Misconduct in the discharge of his duties and is hereby FINED the amount of Seventy-Nine Thousand Six Hundred Forty-Four (P79,644.00) Pesos, same to be deducted from his retirement benefits.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Austria-Martinez, and Carpio-Morales, JJ., on official leave.

[1] President and Vice-President of Subic Realty Corporation, respectively.

- [2] Rollo, p. 20.
- [3] Id. at 189.
- [4] Id. at 190.
- [5] Id. at 191.
- [6] Id. at 193.
- [7] Id. at 194.
- [8] Id. at 195.
- [9] Id. at 196.
- [10] Id. at 198.
- [11] Id. at 197.
- [12] Id. at 199-201.
- [13] Id. at 202-205.
- [14] Id. at 207.
- [15] Id. at 208-210.
- [16] Id. at 213-214.
- [17] Id. at 216-218.
- [18] Id. at 219-222.
- [19] Id. at 224.
- [20] Id. at 56-57.
- [21] Id. at 14.
- [22] Id. at 225.
- [23] Id. at 1.
- [24] Id. at 2-3.
- [25] Id. at 235.
- [26] Id. at 62-65.
- [27] Id. at 66.
- [28] Id. at 83-110.
- [29] Id. at 111.
- [30] Id. at 137.
- [31] Id. at 146-179; 180-225.
- [32] TSN, June 17, 2003.

- [33] TSN, July 8, 2003.
- [34] Rollo, pp. 245-253; pp. 258-266.
- [35] Id. at 344-348.
- [36] Id. at 349.
- [37] Id. at 350-355.
- [38] Id. at 150-153; 248-253.
- [39] 1997 Rules of Civil Procedure.
- [40] Resolution in Bar Matter No. 803 adopted in Baguio City on April 8, 1997.
- [41] Rule 144, Rules of Court.
- [42] Rollo, pp. 189 and 194.
- [43] Id. at 190.
- [44] Phil. Commercial & Industrial Bank v. Court of Appeals, 193 SCRA 452, 460 (1991).
- [45] Vol. 1, Florence D. Regalado, Remedial Law Compendium, p. 399, 5th Revised Ed.
- [46] Rollo, pp. 162-163.
- [47] Id. at 168 and 170.
- [48] Id. at 163 and 166.
- [49] Llenares v. Valdeavella, et al., 46 Phil. 358, 360 (1924).
- [50] Black's Law Dictionary, 5th Ed., West Publishing Co. (1979), p. 510.
- [51] Section 2, Rule 129, Revised Rules on Evidence.
- [52] De Guzman v. Gatlabayan, 352 SCRA 264, 272 (2001).
- [53] V.C. Ponce, Inc. v. Eduarte, 343 SCRA 445, 459 (2000); citing Salazar, Jr. Construction, Inc. v. Espinelli, 110 SCRA 32 (1981).
- [54] TSN, July 8, 2003, pp. 21-23.
- [55] Fabella, et al. v. Lee, et al., A.M. No. MTJ-04-1518, January 15, 2004.
- [56] TSN, July 8, 2003, pp. 12-14.
- [57] Fabella, et al. v. Lee, et al., supra.
- [58] Sarmiento v. Victoria, 343 SCRA 669, 673 (2000).
- [59] Pecson v. Sicat, Jr., 298 SCRA 122, 130 (1998).
- [60] Cunanan v. Flores, 319 SCRA 5, 10 (1999); National Bureau of Investigation v. Tuliao, 270 SCRA 351, 357 (1997).
- [61] Sebastian v. Valino, 224 SCRA 256, 259 (1993); National Bureau of Investigation v. Tuliao, supra.

[62] Pecson v. Sicat, Jr., *supra*.

[63] Section 7(c), Rule 57.

[64] TSN, June 17, 2003, pp. 14, 16-17; Affidavit of Hipolito Erickson Y. Caja, Rollo, p. 179.

[65] Rollo, p. 200.

[66] Office of the Court Administrator v. Fuentes, 247 SCRA 506, 517 (1995); citing Section 2, Republic Act No. 6713.

[67] Sy v. Norberte, 337 SCRA 1, 7 (2000).

[68] Ventura v. Concepcion, 346 SCRA 14, 18 (2000).

[69] Cabanatan v. Molina, 370 SCRA 16, 24 (2001).

[70] Tan v. Dael, 335 SCRA 513, 520 (2000).

[71] Torres v. Cablesuela, 366 SCRA 171, 175 (2001).

[72] Moya v. Bassig, 138 SCRA 49, 52 (1985).

[73] Cunanan v. Flores, 319 SCRA 5 (1999); Padolina v. Henson, 173 SCRA 269 (1989); Policarpio v. Fajardo, 78 SCRA 211 (1977).

[74] October 6, 2004 per Record of Office of Administrative Services, Office of the Court Administrator.

[75] Monthly salary of P13,274.00 (per Record of Office of Administrative Services, Office of the Court Administrator) multiplied by six is equal to P79,644.00.

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