

**NELDA APOSTOL, COMPLAINANT, VS. JUNIE JOVENCIO IPAC,
SHERIFF IV, REGIONAL TRIAL COURT – OFFICE OF THE
CLERK OF COURT, MALolos CITY, RESPONDENT.**

A.M. No. P-04-1865 (Formerly A.M. OCA I.P.I. No. 03-1738-P). July 28, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The facts which spawned the filing of the present administrative complaint by Nelda Apostol (complainant) against Junie Jovencio G. Ipac (respondent), Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Malolos City are as follows:

In Civil Case No. 809, "Silver Spirit Plastics, Inc. v. CWB Plastics Corp. et al.," for ejectment, the Municipal Trial Court (MTC) of Pulilan, Bulacan, dismissed the case. On appeal, Branch 15 of the Regional Trial Court (RTC) of Malolos, Bulacan reversed the MTC dismissal of the case and, by Decision of February 9, 2001, rendered judgment in favor of the therein plaintiff-appellant Silver Spirit Plastics Inc. (Silver Spirit) and against the therein defendants-appellees CWB Plastics Corporation (CWB) et al.,

(a)

Ordering the defendants and all persons claiming under [them] to immediately vacate the leased premises (parcel of land covered by TCT No. T-96407 of Bulacan, the factory and all improvements thereon).

(b)

Ordering the defendants to immediately pay to plaintiff the sum of One Million Eight Hundred Fifty Thousand Pesos (P1,850,000.00), Philippine Currency, representing the unpaid monthly rentals from November 1, 1996 up to October 31, 1999 and the monthly sum of Fifty Thousand Pesos (P50,000.00) every month thereafter, until defendants and all persons claiming under them shall finally vacate the leased premises; and

(c)

Ordering the defendants to pay the reasonable amount of attorney's fees in the sum of P200,000.00.[1] (Underscoring supplied).

Its decision having become final and executory, the RTC by Order of May 4, 2001 directed the issuance of a writ of execution.[2]

It is gathered that the case was brought on appeal to the Court of Appeals which eventually remanded it to the MTC for "proper execution." [3]

Upon motion by the plaintiff, the MTC of Pulilan issued an Order dated March 7, 2003 directing the issuance of a writ of execution "to implement paragraphs b and c of the dispositive portion of the [RTC] decision . . . only against CWB Plastic Corporation and Mary Ann Deniza." [4] A writ of execution was thus issued. [5] Assigned to enforce the writ was respondent who, on April 10, 2003, served it upon CWB through Teresita P. Calma, its

Board Secretary.[6]

Subsequently or on August 14, 2003,[7] respondent served on CWB a Notice of Levy on Execution of its properties. Also on August 14, 2003, respondent took possession of a Toyota Corolla GLI with Plate No. WEC-231, Engine No, 4A-M133930 with Chassis No. AE111-95437001 (the vehicle), over the protest of herein complainant who claimed ownership thereof, she presenting to him a Certificate of Registration of the vehicle and the Official Receipt[8] covering payment of registration fees both in her name, issued on August 8, 2003 by the Land Transportation Office of Malolos District, as well as a Deed of Absolute Sale dated July 24, 2003[9] executed by CWB transferring the ownership of the vehicle to her.

Complainant having failed to restrain respondent from taking possession of the vehicle on August 14, 2003, she filed her Affidavit[10] on August 18, 2003 charging respondent with grave abuse of authority.

By letter-comment dated September 25, 2003,[11] respondent, in compliance with the 1st Indorsement of August 27, 2003[12] of the Office of the Court Administrator (OCA) directing him to comment on the complaint, refuted the claim of complainant that she is the owner of the vehicle. Branding the alleged transfer of ownership of the vehicle as a sinister move on the part of judgment obligor CWB to defraud judgment obligee Silver Spirit, he alleged that during the pendency of the ejectment case, the vehicle remained registered in CWB's name[13] but that after the decision therein had become final and executory and a writ of execution was served on April 10, 2003 to CWB, CWB caused the execution on July 24, 2003 of the notarized (by CWB's company lawyer)[14] Deed of Sale in favor of complainant who is its secretary/accountant.

Complainant countered in her Reply-Affidavit of October 21, 2003[15] that if respondent was of the belief that her ownership of the vehicle was a sham or a ploy to defraud CWB's creditor, he should have filed a case for the nullification of the Certificate of Registration in her name, instead of levying it and selling it at public auction. And complainant charged respondent to be ignorant of his duties as a sheriff under Rule 39, Section 26 of the Rules of Court, he having failed to state in the Certificate of Sale that the vehicle was the subject of a third party claim.[16]

By Resolution of July 21, 2004,[17] this Court required the parties to manifest whether they were submitting the case on the basis of the pleadings/records already filed and submitted. In compliance therewith, respondent, by Manifestation[18] received on January 6, 2005 by the OCA, answered in the affirmative. And he informed that before the auction sale of the vehicle, he required judgment obligee Silver Spirit to post an indemnity bond, which it did,[19] to answer for all the damages that complainant as third party claimant may suffer by reason of the sale. Respondent went on to posit that if complainant did suffer damages due to the auction sale, she should have proceeded against the indemnity bond.

To stress that the present administrative case was intended to harass and intimidate him, respondent brought attention to complainant's filing before the Prosecutors Office of Malolos, Bulacan of a criminal complaint for carnapping against him arising from his same act of levying on execution the vehicle, which complaint was, by Resolution of January 6, 2004,[20] dismissed for lack of probable cause.

The OCA, in its EVALUATION AND RECOMMEN-DATION on the case dated June 17, 2004,[21] found that respondent "grievously erred in implementing the writ of execution by levying on the vehicle over the claim of ownership of the complainant who has the certificate of registration over it"; that it was not within respondent's authority as sheriff to ignore complainant's adverse claim over the vehicle as he did not have any discretion to determine who among the parties was entitled to the possession thereof; and that respondent failed to state in the Certificate of Sale that the vehicle was subject to a third party claim.

The rule is that execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case, and a sheriff who levies upon property other than that of the judgment debtor's acts beyond the limits of his authority.[22]

When respondent levied and took possession of the vehicle, however, on August 14, 2003, he relied on Official Receipt No. 4772165-6 dated January 14, 2003 covering the payment of registration fees for the year 2003 in the name of CWB.[23]

Complainant being a secretary/accountant of CWB, it can reasonably be inferred that she was aware of the case for ejectment filed against CWB et al. by Silver Spirit and the developments thereon. It is in this light that this Court finds well-founded respondent's doubts on the motive behind the transfer to her by her employer CWB of its ownership of the vehicle by a Deed of Sale dated July 24, 2003, after the Writ of Execution of the decision had been served upon CWB on April 10, 2003.

A sheriff's duty in the execution of a writ issued by a court is purely ministerial.[24] When he levies on a property which is claimed by one other than the judgment obligor, Rule 39, Section 16 of the Rules of Court directs him to observe the following procedure:

SEC. 16. Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefore is filed within one hundred twenty (120) days from the date of the filing of the bond.

x x x,

to free him from liability for damages in connection therewith.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous plainly spurious claim.

x x x[25] (Underscoring supplied)

Notably, on August 15, 2003, a day after respondent took possession of the vehicle, he, in accordance with the above-quoted rule, made a demand upon the judgment obligee Silver Spirit that it post an indemnity bond. In compliance therewith, Silver Spirit procured on August 18, 2003 from Pacific Union Insurance Company an indemnity bond in the amount of Two Hundred Fifty Thousand (P250,000) Pesos which was approved by the court.[26] It was only then that the public auction of the vehicle[27] was scheduled, as it did take place on August 25, 2003.

As reflected in the above-quoted Rule 39, Section 16, the purpose of the indemnity bond is to protect and indemnify the third-party claimant for all damages and responsibilities which said party may suffer if the sheriff proceeds with the levy and sale of the contested property.[28] It also serves to shield the sheriff from any personal liability for such damages.[29]

Contrary to complainant's assertion, respondent is not duty bound to file a case for the nullification of

complainant's Certificate of Registration. Silver Spirit having posted an indemnity bond, complainant's remedy was to file an independent reivindicatory action against Silver Spirit which purchased the property at the public auction.[30]

As for the charge that respondent failed to observe his duty under Rule 39, Section 26 reading:

Sec. 26. Certificate of sale where property claimed by third person. - When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to sections 23, 24 and 25 of this Rule shall make express mention of the existence of such third-party claim. (Underscoring supplied),

a perusal of the Certificate of Sale dated August 25, 2003, issued after the vehicle was sold to Silver Spirit at public auction on even date, shows that the sheriff who issued said certificate was not respondent but one Emmanuel L. Ortega who signed as Ex-officio Sheriff[31] of the RTC of Malolos.

WHEREFORE, the complaint against JUNIE JOVENCIO IPAC, Sheriff IV of RTC-OCC, Malolos City is hereby DISMISSED for lack of merit.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 4-5.

[2] Id. at 5.

[3] Ibid.

[4] Ibid.

[5] Id. at 4-5.

[6] Ibid.

[7] Vide Final Deed of Sale, Id. at 9.

[8] Id. at 2-3.

[9] Id. at 16.

[10] Id. at 1.

[11] Id. at 12.

[12] Id. at 6.

[13] Id. at 15.

[14] Vide note 9.

[15] Rollo at 7-8.

[16] REVISED RULES OF COURT, Rule 39, Section 26 provides to wit:

SEC. 26. Certificate of sale where property claimed by third person. - When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to sections

23, 24 and 25 of this Rule shall make express mention of the existence of such third-party claim.

[17] Id. at 20.

[18] Id. at 21.

[19] Id. at 27-28.

[20] Id. at 24-25.

[21] Id. at 17-19.

[22] De Guzman v. Ong, 304 SCRA 206, 212 (1999).

[23] Rollo at 15.

[24] Zarate v. Untalan, A.M. No. MTJ-05-1584, March 31, 2005.

[25] Ibid.

[26] Id. at 27-28.

[27] Id. at 26.

[28] De Guzman v. Ong, *supra* at 8.

[29] Ibid.

[30] Ibid.

[31] Rollo at 9.

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