

**MIRAMAR FISH CO. INC., REPRESENTED BY ITS PRESIDENT,
TEODULO C. GABOR, COMPLAINANT, VS. BIENVENIDO JALON,
DANILO HAN AND CANDIDO J. ABRERA, ALL SHERIFFS III OF THE
MUNICIPAL TRI...**

A.M. NO. P-04-1904. October 25, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present administrative complaint arose from the enforcement by herein respondents Sheriffs III Bienvenido F. Jalon, Danilo T. Han, and Candido J. Abrera of a writ of execution[1] of the decision of this Court in G.R. No. 148592, "Mar Fishing Company Inc. v. Court of Appeals, National Federation of Labor NFWU-NFL, et al.," ordering Mar Fishing to reinstate its dismissed employees to their former positions and to pay them full backwages or, if reinstatement is no longer possible, to pay them separation pay, and to pay attorney's fees equivalent to 10% of the total amount awarded.

Respondents, in enforcement of the writ of execution, issued a Notice of Levy upon Realty[2] dated November 4, 2002 attaching real properties of Mar Fishing Company, Inc. (Mar Fishing) located at Barangay Recodo, Zamboanga City, and Notice of Levy/Attachment Upon Realty/Personalty[3] dated November 26, 2002 attaching five (5) motor vehicles registered in the name of Mar Fishing which had, however, priorly been conveyed to Trade and Investment Development Corporation (TIDCORP) which in turn sold them to Miramar Fish Co., Inc. (Miramar) by Deed of Absolute Sale dated November 15, 2001.

By verified Complaint dated January 27, 2003, Miramar charged respondents to have committed grave abuse of authority in attaching the vehicles the value of which exceeded One Million (P1,000,000.00) Pesos, despite their awareness that they were no longer owned by Mar Fishing and that the award sought to be satisfied amounted to less than half a million pesos only.

In their Comment[4] dated June 30, 2003, respondents jointly asserted that they were only performing their lawful duty as sheriffs when they, "with reasonable diligence and with reasonable promptness," levied upon and attached the properties registered in the name of Mar Fishing, in accordance with the order issued by the Voluntary Arbitrator, Regional Office No. 9, Zamboanga City.

In its evaluation of the case, the Office of the Court Administrator (OCA) finds that while respondents did not err in attaching the personal properties registered in the name of the judgment obligor Mar Fishing, they appear to have failed to observe the proper procedure in the enforcement of execution of judgments for money as laid down in Section 9, Rule 39 of the Revised Rules of Court the pertinent provisions of which read:

Sec. 9. Execution of judgments for money, how enforced. -

(a) Immediate payment on demand. - The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution

and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff shall demand that any payment by check be made payable to him.

(b) Satisfaction by levy. - If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution, giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. 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 are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than 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.

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

x x x (Emphasis and underscoring supplied)

For, so the OCA observes, what respondents initially did was to levy upon and attach real properties with current and fair market value of more than Fourteen Million (P14,000,000.00) Pesos, and thereafter did levy the 5 motor vehicles said to have a total value of more than One Million (P1,000,000.00) Pesos.

A perusal of the records draws this Court to affirm the foregoing observation of the OCA.

By respondent's questioned acts, they not only abused their authority. They also betrayed their ignorance of the rules.

For the above-quoted procedure for the enforcement of judgment for money is self-explanatory. Yet, respondents not only do not claim to have first demanded from judgment obligor Mar Fishing the immediate payment of the full amount stated in the writ of execution - a total of P401,783.35[5] - and all lawful fees. They are completely silent on why they first levied upon real property, instead of personal property, and why properties said to be valued at millions of pesos had been levied when the judgment obligation was only more than P400,000.00.

And respondents rendered nugatory the option given the judgment obligor to choose which property or part

thereof may be levied upon by a mere claim of expediency in the execution of judgments.

While the expeditious and efficient execution of court orders and writs is commendable, it should not, under any circumstance, be done by departing from the Rules governing the same.

The recommendation of the OCA to fault each respondent with grave abuse of authority thus merits approval but not the penalty therefor - a fine of P10,000.00 - which this Court reduces to P5,000.00.[6]

WHEREFORE, respondents Bienvenido F. Jalon, Danilo T. Han and Candido J. Abrera, all Sheriffs III of the Municipal Trial Court in Cities, Zamboanga City, are found guilty of grave abuse of authority and are fined P5,000.00[7] each, with STERN WARNING that repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

[1] Rollo at 21.

[2] Id. at 48; "Annex 3".

[3] Id. at 25.

[4] Id. at 42.

[5] Id. at 21-25.

[6] Wenceslao v. Madrazo, 247 SCRA 696, 703 (1995).

[7] Wenceslao v. Madrazo, Supra, at 707; Lu v. Siapno, 335 SCRA 189 (2000).

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