ATTY. LETICIA E. ALAL,COMPLAINANT, VS. JUDGE SOLIVER C. PERAS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 10, CEBU CITY; JUDGE SIMEON P. DUMDUM, JR., PRESIDING JUDGE, REGIONA...

A.M. No. RTJ-11-2283 (Formerly OCA I.P.I. No. 10-3478-RTJ). November 16, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before this Court is the Verified Complaint[1] with an Urgent Prayer for Transfer of Venue dated July 27, 2010 filed by Atty. Leticia E. Ala (complainant) charging all respondents with various violations relative to Civil Case No. CEB 32893, entitled VTL Realty Corporation v. Atty. Leticia E. Ala and docketed with the Regional Trial Court (RTC) of Cebu City.

The Facts

In May 2000, complainant was the counsel of Adelaida Alba-Chua (Mrs. Chua) in Civil Case No. Q-00-40681, entitled Adelaida Alba-Chua v. Benson Go Chua, for declaration of nullity of marriage at the RTC, Branch 107, Quezon City (QC), presided by then Judge Rosalina L. Luna-Pison (Judge Pison). In 2002, complainant was replaced as counsel but recognized as Intervenor in the said case.

On August 12, 2003, Judge Pison issued a Partial Judgment[2] based on a compromise agreement regarding the property matters of the spouses. It was agreed that Benson Go Chua (Chua) would assume the payment of complainant's professional fee as Mrs. Chua's counsel, as follows:

6. The attorney's fees of Atty. Ala although computed on the basis of her 10-percent claim against the 30% share of petitioner shall be paid, assumed and collected from the share exclusively belonging to Mr. Benson Chua, but the manner of payment of which shall be subject to further discussion between Atty. Ala and respondent, Benson Chua.[3]

Complainant filed her Motion for Execution of the Partial Judgment, which was granted by the Court in its Resolution[4] dated March 29, 2004, which ordered the issuance of a writ of execution in favor of complainant for the amount of P3,015,203.67. In the same resolution, the court cashier was also ordered to deliver to complainant the amount of P164,000.00, which had been earlier deposited by Chua. Accordingly, the Writ of Execution was issued and was partially implemented with the delivery of the amount of P164,000.00 to complaints as partial payment of her professional fee.

Meanwhile, upon motion by Chua, Judge Pison inhibited herself front the case. In June 2004, the case was re-raffled to RTC, Branch 94, QC, presided by Judge Romeo F. Zamora (Judge Zamora). In his Resolution[5] dated July 11, 2005, Judge Zamora reiterated the finality of the Partial Judgment and the Resolution granting the Motion for Execution issued by Judge Pison, and directed the issuance of another Writ of Execution for the balance of P2,851,203.67 in favor of complainant. Accordingly, an alias Writ of Execution[6] was issued on July

14, 2005.

On September 7, 2005, Sheriff Fernando Regino of the RTC, Branch 94, QC made a levy on three motor vehicles owned by Chua in Cebu City. The three vehicles were later left with the CIDG, Cebu City, for safekeeping and were eventually released to the effective possession of Chua.

Earlier, on July 18, 2005, the alias Writ of Execution was implemented by the Office of the Ex-Oficio Sheriff of the RTC of Cebu City. The implementing sheriff, respondent El Cid Caballes (respondent Sheriff Caballes), however, failed in his first attempt to make a levy. Subsequent attempts at implementation of the writ also produced negative results. Later, upon a tip that Chua was attempting to sell the conjugal home of the spouses in Cebu City, respondent Sheriff Caballes was able to levy an execution on the conjugal home covered by Transfer Certificate of Title (TCT) No. 110723, registered in the name of Chua. The levy was annotated on the title. The property was then scheduled to be sold by public auction on November 9, 2006.

On November 3, 2006, before the scheduled public auction of the conjugal home, an independent action was instituted, docketed as Civil Case No. CEB-32893, entitled VTL Realty Corporation v. Atty. Leticia E. Ala, et al. for Injunction and Damages with an Application for Temporary Restraining Order (TRO). The case was filed to enjoin the public auction set on November 9, 2006 on the ground that the conjugal home was no longer owned by Chua but by VTL Realty Corporation (VTL), as it had been the subject of a foreclosed mortgage sold by Metrobank to VTL on November 26, 2002. The case was first raffled to RTC, Branch 7, Cebu City, presided over by respondent Judge Simeon P. Dumdum, Jr. (respondent Judge Dumdum), On November 3, 2006, respondent Judge Dumdum issued a 72-hour TRO enjoining the execution sale by public auction.

On November 9, 2006, after the lapse of the 72-hour TRO and pursuant to the Writ of Execution issued in the nullity case, the subject property was sold and awarded to complainant as the highest bidder. On November 17, 2006, the sale was registered with the Register of Deeds in Cebu City.

In the meantime, Civil Case No. CEB-32893 was re-raffled to RTC, Branch 23, Cebu City, presided by respondent Judge Generosa G. Labra (respondent Judge Labra). Complainant filed her Motion to Dismiss dated November 13, 2006 on the grounds that the Certificate of Sale of the foreclosure was falsified and that the alleged foreclosure was only registered with the Register of Deeds after the levy of execution in favor of complainant. VTL filed its Amended Complaint dated November 18, 2006 for Declaration of Nullity of the Execution Sale. In response, complainant filed her Motion to Dismiss the Amended Complaint for forum-shopping, interference in the processes of a co-equal court, and for lack of cause of action. Respondent Judge Labra denied the complainant's motion in the Order[7] dated April 12, 2007.

In May 2007, respondent Judge Labra inhibited herself upon motion by complainant. The case was re-raffled to the RTC, Branch 10, Cebu City, presided by respondent Judge Soliver C. Peras (respondent Judge Peras). In his Order dated November, 16, 2007, respondent Judge Peras directed the issuance of a writ of preliminary injunction to enjoin the issuance of a new TCT in favor of complainant. It was later issued on December 3, 2007. Complainant filed motions and manifestations questioning whether the injunction bond was paid, which remained pending before the said court.

The marriage nullity case, in the meantime, had been re-raffled from one sala to another since then. After Judge Zamora inhibited himself from the case, Judge Ma. Elisa Sempio-Dy of RTC, Branch 225, QC, took over until she was made to recuse herself upon motion by Chua. Thereafter, the case was re-raffled to RTC, Branch 89, QC presided over by Judge Elsa A. De Guzman, and eventually to RTC, Branch 102, QC, whose presiding judge, Judge Lourdes A. Gjron (Judge Giron), directed the consolidation of ownership of the property under TCT No. 110723 in favor of complainant.

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In an Order[8] also dated December 3, 2007, the same day the Writ of Preliminary Injunction was issued by respondent Judge Peras, as more than one year had elapsed from the execution sale without redemption, Judge Giron directed the issuance of the Sheriffs Final Certificate of Sale and a Writ of Possession in favor of complainant, and directed the Register of Deeds to cancel TCT No. 110723 and issue a new title in complainant's name. Accordingly, the Sheriff's Final Certificate of Sale[9] and the Writ of Possession[10] were issued on December 7 and 10, 2007, respectively.

On December 11, 2007, Chua was served the Notice to Vacate.[11] On December 27, 2007, Chua was removed from the subject property and a turnover of possession was, effected.[12]

As a result, Chua filed a petition for certiorari with the Court of Appeals (CA) docketed as CA G.R. SP No. 98597, questioning the execution sale conducted on November 9, 2006. The CA dismissed the petition, which impelled Chua to file a petition for review with this Court docketed as G.R. No. 183791. The Court, in its October 6, 2008 Resolution, denied the petition, which became final and executory with an Entry of Judgment[13] dated April 17,2009.

On the basis of the said resolution, complainant filed another Motion to Dismiss in the injunction case, which was denied by respondent Judge Peras in his Order[14] dated July 7, 2010.

In view of the above factual background, complainant filed the present complaint against the respondents on the following grounds:

1. Respondent Judge Peras, Presiding Judge of RTC, Branch 10. Cebu City for:

- Insubordination in flagrantly disobeying the "hierarchy of courts" doctrine and trivializing this Court's judicial review powers in failing to recognize its ruling in G.R. No. 183791 , affirming the execution sale in favor of complainant;

- Gross Ignorance of the Law in exercising jurisdiction over a case for declaration of nullity of execution sale conducted under the direction of the RTC of Quezon City, which is a court of concurrent jurisdiction;

- Grave Abuse of Discretion and Gross Ignorance of the Law in enjoining the RTC QC Order which directed the Register of Deeds of Cebu City to cancel TCT No. 110723 and to issue a new title in the name of complainant;

- Dereliction of Duty in not resolving pending incidents within the regulatory period, and in not resolving the many inquiries of complainant in relation to the non-payment of the injunction bond;

- Bias and Partiality in insulating respondent Clerk of Court Atty. Jeoffrey S. Joaquino (respondent Clerk of Court Joaquino), respondent Sheriff Fortunato S. Viovicente (respondent Sheriff Viovicente), and VTL, from inquiries made by complainant as to lack of service of the Writ of Preliminary Injunction, and the non-payment of the injunction bond and the clerk's commissions in relation to the trumped-up foreclosure sale;

- Refusing to dissolve the Writ of Preliminary Injunction despite non-payment of injunction bond, breach of injunctive relief by surreptitiously filing for consolidation of title by VTL, and in recognizing a patently trumped-up foreclosure sale based on three falsified certificates of sale where the clerk's commissions were not paid; and

- Pre-judging the, outcome of the injunction case in the Order dated July 7, 2010, which stated:

> Although the Court commiserate[s] with defendant Ala's predicament, it cannot likewise totally disregard plaintiffs rights as a purchaser of a property in the extra-judicial foreclosure sale.[15]

2. Respondent Judge Dumdum, Presiding Judge of RTC, Branch 7, Cebu City for:

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- Gross Ignorance of the Law in exercising jurisdiction over the case for injunction, and issuing a TRO dated November 6, 2006 enjoining the execution sale directed by the RTC of Quezon City, which is a court of concurrent jurisdiction;

- Bias and Partiality in allowing the use of his official stamp pad by Chua and Peter Po on a falsified certificate of sale dated November 26, 2002 to give it a semblance of regularity; and

- Dishonesty in approving another version of a falsified certificate of sale dated January 3, 2003 under the rubric "Executive Judge" while he was not yet the executive judge of the RTC of Cebu City.

3. Respondent Judge Labra, Presiding Judge of RTC, Branch 23, Cebu City for:

- Gross Ignorance of the Law in exercising jurisdiction in the injunction case that was later amended to a case for declaration of nullity of execution sale which was directed by the, RTC of Quezon City, which is a court of concurrent jurisdiction;

- Gross Ignorance of the Law and rules on amendment of complaints, formal offer of evidence and crafting of orders, and in failing to rule on the admissibility of complainant's formal offer of evidence on the motion to dismiss; and

- Bias and Partiality in flagrantly glossing over the falsified certificates of sale and falsified annotations on TCT No. 110723 that were brought to her attention, and for copying the arguments and authorities of adverse counsel to deny complainant's motion to dismiss.

4. Joeffrey S. Joaquino (Respondent Clerk of Court Joaquino), Executive Clerk of Court and Ex-Oficio Sheriff of the RTC of Cebu City for:

- Gross Incompetence, Dereliction of Duty, and Dishonesty in recommending the approval of an injunction bond, issuing a Writ of Preliminary Injunction without the payment of the injunction bond, and ignoring all formal inquiries in relation thereto;

- Usurpation of the duties of the regular Branch Clerk of Court of RTC, Branch 10 of Cebu City in the processing and issuance of the Writ of Preliminary Injunction;

- Gross Dishonesty in recommending for approval a falsified certificate of sale dated January 6, 2003 to "Executive Judge Dumdum" who was not yet an executive judge at the time, without the payment of the clerk's commissions under the rules, and refusing to answer all inquiries thereto; and

- Condoning the inefficiencies of a subordinate sheriff, respondent Sheriff Caballes, in the implementation of the writ of execution endorsed to his office sometime in July 2005 by the RTC, Branch 94 of Quezon City.

5. Respondent Sheriff Caballes, Sheriff IV, Office of the Ex-Oficio Sheriff of the RTC of Cebu City for:

- Dereliction of Duty in not making a levy on July 18, 2005 during the implementation of the Writ dated July 14, 2005 issued by the RTC, Branch 94 of Quezon City; and

- Gross Dishonesty in surreptitiously submitting the Sheriffs Progress Report dated October 23, 2006, before the RTC of Quezon City, which was intended to stop the execution sale, knowing that he was no longer the implementing sheriff, and without furnishing a copy thereof to the complainant.

6. Fortunato T. Viovicente, Jr. (Respondent Sheriff Viovicente) Sheriff IV, Branch Sheriff of the RTC, Branch 10, Cebu City for:

- Dereliction of Duty in not furnishing complainant a copy of the Writ of Preliminary Injunction; and

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- Gross Dishonesty in making a Return to the RTC, Branch 10 of Cebu City to the effect that complainant was furnished a copy of the writ of preliminary/injunction on December 4, 2007, knowing such to be false since it was mailed to complainant only on December 28, 2007.

Lastly, complainant asserts that she has been going through much physical, emotional and financial stress from being forced to litigate in Cebu City since the filing of the injunction case in November 2006. She, thus, requests for the transfer of venue to prevent further miscarriage of justice.

In his Comment[16] dated September 21, 2010, respondent Judge Dumdum denied the charges against him. On the charge of Gross Ignorance of the Law, he explained that he issued the assailed 72-hour TRO because he saw the pressing need for its issuance. Under the Rules of Court, he averred that third party claimants to levied property have the right to vindicate their claims in a separate action. His issuance of the TRO is an exception to the rule that a court has no power to restrain by means of injunction the execution of a judgment of another court of concurrent jurisdiction because VTL is a third party claimant to the subject property.

On the charge of Bias and Partiality by allowing the use of his official stamp pad, respondent Judge Dumdum averred that he never gave Chua or Peter Po the authority to use his official stamp pad. He explained that his official stamp pad was kept by a clerk in an open box on her table which was accessible to court employees, and that he gave specific instructions to the clerk to keep it under lock and key. He also pointed out that although the questioned certificate of sale contains his stamp, such does not show his or the clerk of court's signatures.

Anent the charge of Dishonesty for approving a falsified certificate of sale dated January 6, 2003 before he was appointed Executive Judge on March 12, 2004, respondent Judge Dumdum maintained that he approved it when he was already the Executive Judge. He explained that he only signed it because it contained the signature of respondent Clerk of Court Joaquino who had the duty of ensuring that it had complied with all the legal requirements. He further stated that the date of the certificate was not
necessarily the same as the date of its approval, as there were times when an appreciable period might have gone by between its preparation and approval. Moreover, he asserted that it was highly improbable and irrational for him to have an Executive Judge stamp prepared for himself prior to his appointment as such and during the incumbency of another Executive Judge, for the sole purpose of approving a certificate of sale.

In his Supplemental[17] Comment dated October 20, 2010, respondent Judge Dumdum appended certified true copies of Official Receipt Nos. 5104637A and 5109389A dated November 16, 2006, issued to VTL, to support his claim that he signed the certificate of sale not on January 6, 2003, but at about November 16, 2006, when he was already Executive Judge.

In his Comment[18] dated September 23, 2010, respondent Sheriff Caballes denied the charge of Dereliction of Duty. He averred that he could not be considered negligent of his duties because he immediately acted on the alias writ of execution issued on July 14, 2005. He explained that he received the RTC Order on July 18, 2005, on which date he prepared a Notice of Demand to Satisfy the Writ of Execution and proceeded to Chua's place of business where he served the notice to Chua's staff as he was not around. On July 19, 2005, he proceeded to Chua's residence and served the notice to a househelper as Chua was again not around. On July 20, 2005, he conducted a property check and proceeded to the Register of Deeds of Cebu City where he was able to procure a photocopy of TCT No. 110723. On July 21, 2005, a Notice of Levy was filed and annotated in the Register of Deeds. He, however, did not proceed with the auction sale because of the existence of prior liens. On October 23, 2006, he submitted a Progress Report to the court of origin.

As to the charge of Gross Dishonesty in failing to furnish complainant with a copy of the Progress Report, respondent Sheriff Caballes explained that it was a mere unintentional oversight.

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In his Comment[19] dated September 15, 2010, respondent Sheriff Viovicente denied the charges of Dereliction of Duty and Dishonesty in preparing the Sheriffs Returns. He explained that complainant was furnished a copy of the Writ of Preliminary Injunction together with copies of the plaintiffs application and bond through registered mail on December 28, 2007, which was received on January 4, 2008. Copies of the registry return receipt and rubber stamp imprint on the Writ of Preliminary Injunction were appended to support his claims.

Regarding the discrepancy in the dates of the mailing of the Sheriffs Return, respondent Sheriff Viovicente explained that he prepared the mailing envelope containing a copy of the Writ of Preliminary Injunction, evaluation of application for surety bond and injunction bond addressed to the complainant, and left it on the table of the clerk-in-charge for mailing on December 4, 2007. When he prepared the Sheriffs Return, he believed that the envelope would be mailed on the same day but the clerk-in-charge only mailed the envelope on December 28, 2007.

In his Comment[20] dated September 23, 2010, respondent Clerk of Court Joaquino denied the charges against him. He averred that as far as he could remember, he saw to it that all the requirements had been complied with before indorsing the injunction bond. In his Manifestation dated October 27, 2010, he appended copies of the official receipts as evidence of payments made by VTL for clerk's commissions.

With regard to the allegation that he ignored all formal inquiries made by complainant, respondent Clerk of Court Joaquino claimed that complainant went to his office to inquire about the injunction case, and he answered all her queries and pointed out to her that some of the answers to her questions could be found in the case record. He thought that he had given sufficient explanation and that a formal answer to the complainant's letters was no longer necessary.

As regards the charge of Usurpation of the Duties of the Branch Clerk of the RTC, Branch 10, Cebu City, respondent Clerk of Court Joaquino stated that whenever the Office of the Clerk of Court would receive an order directing the issuance of a writ, he would issue the writ then forward it to the Branch Sheriff of the issuing court. He added that it was the practice in then-Office that all writs were issued and signed by him, except for one or two branches.

Anent his condonation of the inefficiencies of' respondent Sheriff Caballes, respondent Clerk of Court Joaquino pointed out that complainant never raised the matter with him. He added that because of his workload and the fact that the RTC of Cebu City had 28 sheriffs, he could not monitor all their activities. Consequently, he relied on reports of the parties and their counsels regarding the implementation of the writs assigned to him.

In his Comment[22] dated October 30, 2010, respondent Judge Peras denied the charges against him. As to the complaint that he interfered with the judgment of a co-equal court in ordering the issuance of the Writ of Preliminary Injunction on November 16, 2007, he averred that it was done in good faith and in accordance to his assessment of the evidence presented. He cited jurisprudence in arguing that the issuance of a preliminary injunction against an execution of judgment could not be considered an interference of a co-equal court when third parties were involved, and that third party claimants may vindicate their claim by an independent action, which may stop the execution of a judgment on property not belonging to the judgment debtor. Further jurisprudence was cited to explain that a money judgment was enforceable only against property unquestionably belonging to the judgment debtor. He contended that complainant was aware that the subject property did not belong to Chua because such was acknowledged to have been foreclosed in the Partial Judgment, to wit:

> The conjugal home of the parties in Sto. Nino Village has been previously foreclosed by Metrobank, Cebu. Should the respondent decide to redeem the property, the petitioner and the children hereby forever waive their claims on the said property.[23]

Respondent Judge Peras also denied the charge that he deliberately stalled the proceedings of the injunction case with respect to the issuance of a subpoena duces tecum against respondent Clerk of Court Joaquino regarding the alleged non-payment of the injunction bond. He averred that when the injunction case was raffled to him, he promptly acted on all pending incidents, conducted hearings, received evidence, and required the submission of pleadings on VTL's application for the issuance of the Writ of Preliminary Injunction. He explained that the proceedings in the injunction case were held in abeyance pending the resolution of complainant's Motion for Summary Judgment, which was filed on July 29, 2008 and eventually denied on March 26, 2009. Complainant's motion for the issuance of a subpoena duces tecum against respondent Clerk of Court Joaquino was promptly acted upon and set for hearing on May 22, 2009.

On May 18, 2009, complainant manifested that she had prayed to the Supreme Court for a transfer of venue of the case as she did not want respondent Judge Peras to conduct the trial. Complainant insisted that he should not continue with the proceedings until such time that the issue of transfer of venue is resolved. Respondent Judge Peras averred that notwithstanding complainant's preference to wait for the resolution of her request, he directed the parties to appear before the Mediation Office to explore the possibility of amicable settlement. He was of the opinion that it was complainant's actions which slowed the proceedings of the injunction case.

In her Comment[24] dated November 3, 2010, respondent Judge Labra denied the charges against her and adopted the Comment submitted by respondent Judge Peras in response to the charge of interference with the judgment of a court of concurrent jurisdiction. She explained that she admitted the amended complaint of VTL without leave of court since such was a matter of right as no responsive pleading had yet been filed. Anent the allegation that she did not act on complainant's formal offer of documentary evidence, she pointed out that complainant had previously orally offered the same and all the exhibits had been admitted.

Complainant filed her Reply[25] dated November 2, 2010, to the Comments of respondents Judge Peras, Judge Dumdum, Clerk of Court Joaquino, Sheriff Caballes, and Sheriff Viovicente.

As regards respondent Judge Peras' Comment, complainant reiterated the impropriety of the interference with the processes of the RTC, Quezon City. Complainant insisted that the application for the issuance of the Writ of Preliminary Injunction should not have been granted because in G.R. No. 1837981, this Court denied the Petition for Review questioning the CA Decision which affirmed the execution sale of the subject property in her favor. She also pointed out that respondent Judge Peras did not comment on the charge of bias and partiality in insulating respondent Clerk of Court Joaquino; his refusal to dissolve the writ; on pre-judging the outcome of the injunction case; and on his failure to resolve the matter of whether the injunction bond was paid or not.

Anent the Comment of respondent Judge Dumdum, complainant argued that had he thoroughly examined the documents presented, he would have seen that VTL should have filed the injunction case before the RTC of Quezon City and not Cebu City. Regarding allowing unauthorized persons to have access to his official stamp, the complainant countered that respondent Judge Dumdum should have kept it under lock and key. With respect to the claim of respondent Judge Dumdum that the date of the certificate of sale was not necessarily its date of approval, complainant stressed that the date of the amended certificate of sale that respondent Clerk of Court Joaquino wanted approved in 2007 was January 6, 2003. Complainant averred that the superimpositions on the document were plainly noticeable.

In his Rejoinder,[26] respondent Judge Dumdum explained that the certificate of sale was registered with the Register of Deeds in 2007, which was distinct from the date he approved it in November 2006.

With regard to the Comment of respondent Clerk of Court Joaquino, complainant asserted that he was lying because when she went to his office, he required her to put all her queries in writing. She did as instructed and

never received a reply. Complainant disagreed with respondent Clerk of Court Joaquino's practice of issuing all the writs for most of the branches of the RTCs in Cebu City. Regarding his condonation of the inefficiencies of his subordinates, complainant claimed that during the implementation of writ on July 18, 2005, she had provided trucks, laborers, a bodega, escorts, and law enforcers, yet they all returned empty-handed.

With respect to the Comment of respondent Sheriff Caballes, complainant asserted that the representative she sent during the implementation of the writ on July 18, 2005 reported to her that respondent Sheriff Caballes did not levy on any of the properties in Chua's store but simply kept himself busy talking to Chua and his lawyers over the phone. Moreover, when she sent an adverse claim over TCT No. 110723 with the Register of Deeds of Cebu City, it was only then that she was informed that there was a levy of execution conducted on July 22, 2005 by respondent Sheriff Caballes. Complainant alleged that she was not informed of the levy and did not receive a copy of the Sheriffs Return, which was done intentionally to derail the execution sale of the subject property.

On the Comment submitted by respondent Sheriff Viovicente, complainant averred that when she inadvertently found out that a Writ of Preliminary Injunction had been issued and asked for a copy of the Sheriffs Return signed by respondent Sheriff Viovicente, she was informed that it had already been mailed to her on December 4, 2007.

In complainant's Supplemental Reply[27] to the belated Comment of respondent Judge Labra, she expressed her frustration over the mere adoption of the Comment of respondent Judge Peras. Complainant further averred that she had no idea why respondent Judge Labra exercised jurisdiction over the injunction case and insisted that her formal offer of evidence was never ruled upon. She reiterated her claim of impropriety of the interference in the judgment and processes of the RTC, QC by the RTC, Cebu City, and her allegations regarding the falsified certificate of sale. She also questioned the veracity of the copy of the official receipts submitted by respondent Clerk of Court Joaquino, and recommended the audit of the Office of the Clerk of Court of the RTC, Cebu City.

On March 17, 2001, the Office of the Court Administrator (OCA) recommended that the administrative complaints against respondent Judges Peras, Dumdum, and Labra be dismissed for being judicial in nature; that respondent Clerk of Court Joaquino be suspended for 30 days without pay for neglect of duty and for failure to promptly act on letters and requests, and sternly warned that a repetition of the same or similar act shall be dealt with more severely; the adiministrative complaints against respondent Sheriffs Caballes and Viovicente be dismissed but they be reminded to be more circumspect in the performance of their duties; and that the request for transfer of venue for Civil Case No. CEB-32893 be denied for lack of merit.

The Court's Ruling

The Court adopts the findings and recommendation of the OCA with modification.

Respondents Judge Peras,
Judge Dumdum and Judge Labra

Complainant charges respondent Judges Peras, Dumdum, and Labra with Insubordination, Gross ignorance of the Law, Grave Abuse of Discretion, and Bias and Partiality with respect to their acts of taking cognizance of the injunction case and issuing orders thereto in violation of the basic principle of law that once a court acquires jurisdiction, it maintains the same until the controversy is finally disposed of. The doctrine of judicial stability or non-interference in the regular orders of a co-equal court is cited as an insurmountable barrier to the competence of another co-equal court to entertain a motion or order relative to property which is in custodia legis of another court by virtue of a prior writ of attachment. It is painstakingly argued and reiterated by complainant that the orders issued in the injunction case filed in Cebu City interfered with the order for execution of the partial judgment in the nullity case filed in Quezon City, and as such, the injunction case should have been dismissed.

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The Court disagrees.

In order to find merit in complainant's allegations, a review on the merits of the respondent Judges' orders would be imperative. This task, however, is not the proper subject of an administrative case but for a court of justice to determine in an appropriate case. The law provides for ample judicial remedies against errors or irregularities committed by the RTC in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature include a motion for reconsideration, a motion for new trial, and an appeal. The extraordinary remedies against errors or irregularities which may be deemed extraordinary in character are the special civil actions of certiorari, prohibition or mandamus, or a motion for inhibition, or a petition for change of venue, as the case may be.[28]

The availability of these judicial remedies precludes resort to criminal, civil or administrative proceedings against a judge. It is an established doctrine that disciplinary proceedings and criminal actions against a judge are not alternative or cumulative, complementary or suppletory to, nor a substitute for, judicial remedies. Exhaustion of judicial remedies and the entry of judgment in the corresponding action or proceedings, are pre-requisites for the taking of civil, administrative, or criminal cases against the
judge concerned.[29]

A review of the records shows that complainant failed to timely raise her concerns in an appropriate judicial proceeding. Until and unless there is an authoritative pronouncement that the questioned orders of the respondent Judges were indeed tainted by anomaly, there would be no ground lo prosecute the respondent Judges, either administratively or criminally, for rendering them.[30] Thus, an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available, for if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against him at all.[31] Thus, the charges being judicial in nature, the remedy of the complainant should have been with the proper court for the appropriate judicial action and not with the OCA by means of an administrative complaint.[32]

In addition to the requirements of exhaustion of judicial remedies, and a final declaration by a competent court in an appropriate proceeding of the manifestly unjust character of the challenged judgment or order, there must also be evidence of malice or bad faith, ignorance or inexcusable negligence, on the part of the judge in rendering said judgment or order.[33] Judges are generally not liable for acts done within the scope of their jurisdiction and in good faith. Complainant failed to prove that the respondent Judges acted with malice, bad faith, ignorance, or inexcusable negligence in rendering their questioned orders.

With respect to the other charges which are non-judicial in nature, they were satisfactorily rebutted by the respondent judges in their respective Comments. Complainant also failed to show that their actions or inaction pertaining to their judicial functions were tainted with fraud, dishonesty, corruption, and bad faith, as is required for a disciplinary action to prosper.[34]

Judges must be free to judge, without pressure or influence from external forces or factors; they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do in the performance of their duties and functions.[35] For complainant's failure to exhaust judicial remedies, to prove malice and bad faith, and to substantiate her other allegations by substantial evidence, the administrative complaint against respondent Judges should be dismissed.

Respondent Clerk of Court Joaquino

Complainant questioned the act of respondent Clerk of Court Joaquino in recommending the approval of the

injunction bond and issuing the writ of preliminary injunction without payment of the injunction bond, and in ignoring all formal inquiries in relation thereto. In his defense, respondent Clerk of Court Joaquino averred that as far as he could remember, all the requirements of the injunction bond were complied with before he indorsed it. The Court finds respondent Clerk of Court Joaquino's mere denial to be insufficient. Considering that proof of payment of the injunction bond should have been presented to him prior to its approval, it should have been in his possession, and should have been presented to prove that the injunction bond was, in fact, paid.

On his failure to officially respond to complainant's various formal inquiries regarding the injunction bond, respondent Clerk of Court Joaquino's claim to have orally answered the complainant's formal queries when she visited the Office of the Clerk of Court (OCC) cannot exonerate him, as a verbal reply to a formal and written inquiry is not sufficient.[36] Republic Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 5 (a) thereof provides that all public officials and employees shall, within 15 working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.[37] In fact, Administrative Circular No. 8-99 was issued to remind all employees in the Judiciary to strictly observe Section 5 (a).

Complainant also assails respondent Clerk of Court Joaquino's act of recommending the approval of an allegedly falsified certificate of sale to respondent Judge Dumdum who was not yet the Executive Judge at the time and without the payment of the clerk's commissions as required. In administrative proceedings, complainant has the burden of proving by substantial evidence the allegations in their complaint.[38] In the present case, complainant failed to substantiate her allegations as she failed to prove that the certificates of sale were falsified. On the contrary, it has been sufficiently shown in respondent Judge Dumdum's Comment that he was already the Executive Judge at the time he approved the certificate of sale. Furthermore, respondent Clerk of Court Joaquino presented official receipts[39] to prove payment of the clerk's commissions.

Anent the charge of condoning the inefficiencies of respondent Sheriff Caballes, respondent Clerk of Court Joaquino admitted that he could not monitor all 28 sheriffs of the RTC of Cebu City, thus, he relied on reports from the parties or their counsels regarding each sheriffs performance. This cannot excuse him from the duty of supervising his personnel at the OCC. As. Clerk of Court, it is his duty to plan, direct, supervise, and coordinate sheriffs' activities of all division/sections/units in the OCC.[41]

From the foregoing, it is clear that respondent Clerk of Court Joaquino was remiss in the performance of his duties. The Court, thus, finds the penalty of reprimand to be appropriate under the circumstances. Respondent Clerk of Court Joaquino, however, should be sternly warned that a repetition of the same or similar foregoing acts shall be dealt with more severely.

Respondent Sheriff Caballes

Complainant alleged that respondent Sheriff Caballes was remiss in his duty to implement the Writ of Execution dated July 14, 2005. In response, respondent Sheriff Caballes presented evidence to prove that upon receipt of that order he immediately prepared a Notice of Demand to Satisfy Writ of Execution and proceeded to Chua's place of business and residence. He, however, admitted that complainant was not furnished a copy of the Sheriffs Progress Report but his failure was not intentional.

It is a settled rule that in administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties.[42] In this case, respondent Sheriff Caballes showed that he acted

promptly in the implementation of the writ. Nevertheless, he failed in his duty to furnish the complainant a copy of the Sheriffs Report in accordance with Section 144j of Rule 39 of the Rules of Court. In accordance with Rule IV, Section 52(B)(1)44 of the Uniform Rules on Administrative Cases in the Civil Service, 3 he should be held liable for Simple Neglect of Duty. Considering, however, that it is his first administrative offense and that such was unintentional, respondent Sheriff Caballes should be admonished and sternly warned that the same or similar act of negligence shall be dealt with more severely.

Respondent Sheriff Viovicente

Complainant charged respondent Sheriff Viovicente with Dereliction of Duty for not furnishing her with a copy of the Writ of Preliminary Injunction and Gross Dishonesty in stating in the Sheriffs Return that she was furnished a copy of the writ of December 4, 2007 while the truth was that it was mailed only on December 28, 2007. Respondent Sheriff Viovicente faulted the clerk-in-charge for having failed to mail the prepared envelope on the same day he left it on the clerk's desk for mailing.

Instead of ensuring that the copy of the writ was indeed mailed, respondent Sheriff Viovicente simply assumed so. For this, he should be reminded to be more circumspect in the performance of his duties as the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, are circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum, but above all, be beyond suspicion.[46]

Transfer of Venue

Complainant coupled her present administrative complaint with a prayer for transfer of venue of Civil Case No. CEB 32893, grounded on her charges against the respondents. She alleged that the collective actions of respondents have dove-tailed with one another, resulting in an extremely biased dispensation of justice to her prejudice. She contended that she has been forced to litigate in Cebu City since November 2006 and prays that the case be transferred to any RTC in Metro Manila.

Section 5 (4),[47] Article VIII of the 1987 Constitution provides that this Court has the power to order a change of venue or place of trial to avoid a miscarriage of justice. Consequently, where there are serious and weighty reasons present which would prevent the court of original jurisdiction from conducting a fair and impartial trial, this Court has been mandated to order a change of venue so as to prevent a miscarriage of justice.[48]

Considering that the administrative charges against the respondents, on which her request for transfer of venue is based, have been discussed and disposed of above, and further considering that the real property involved in the case, covered by TCT No. 110723, is situated in Cebu City, the Court finds no serious and weighty reasons to prevent the RTC of Cebu City from conducting a fair and impartial trial. Accordingly, the prayer to transfer venue must be denied.

WHEREFORE,

1. The administrative complaint against Judge Soliver C. Peras, Presiding Judge, Regional Trial Court, Branch 10, Cebu City; Judge Simeon P. Dumdum, Jr., Presiding Judge, Regional Trial Court, Branch 7, Cebu City; and Judge Generosa G. Labra, Presiding Judge, Regional Trial Court, Branch 23, Cebu City, are DISMISSED for being judicial in nature and for lack of merit;

2. Atty. Jeoffrey S. Joaquino, Clerk of Court VII, Regional Trial Court, Office of the Clerk of Court, Cebu City, is REPRIMANDED and STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely;

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3. El Cid R. Caballes, Sheriff IV, Regional Trial Court, Office of
the Clerk of Court, Cebu City, is ADMONISHED and STERNLY WARNED that a repetition of the same or similar act of negligence shall be dealt with more severely;

4. The administrative complaint against Fortunato T. Viovicenle, Jr., Sheriff IV, Regional Trial Court, Branch 10, Cebu City, is DISMISSED, but he is REMINDED to be more circumspect in the performance of his duties; and

5. The request for transfer of venue of Civil Case No. CEB-32893 is DENIED for lack of merit.

SO ORDERED.

Velasco, Jr., (Chairperson), Brion[*], Peralta, and Perez[**], JJ., concur.

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[*] Designated as additional member in lieu of Associate Justice Roberto A. Abaci per Special Order No. I 150 dated November II, 2011.

[**] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11,2011.

[1] Rollo, pp. 1-34.

[2] Id. at 36-39.

[3] Id. at 38.

[4] Id. at 40-44.

[5] Id. at 46-52.

[6] Id. at 53-57.

[7] Id. at 123.

[8] Id. at 82-86.

[9] Id. at 87-88.

[10] Id at 82-86.

[11] Id. at 91.

[12] Id. at 92.

[13] Id. at 203-204.

[14] Id. at 192-202.

[15] Id. at 201.

[16] Id. at 221-230.

[17] Id. at 362-366.

[18] Id. at 243-245.

[19] Id. at 327-328.

[20] Id. at 370-372.

[21] Id. at 500.

[22] Id. at 443-463.

[23] Id. at 37.

[24] Id. at 423-428.

[25] Id. at 337-405.

[26] Id. at 517-519.

[27] Id. at 507-516.

[28] Flores v. Abesamis, 341 Phil. 299,312-313 (1997).

[29] Id. at 313.

[30] Id. at 314.

[31] Santos v. Orlino, 357 Phil. 102, 108 (1998).

[32] Dionisio v. Escano, 362 Phil. 46, 56-57 (1999).

[33] Flores v. AbesamLi, supra note 28 at 313-314.

[34] Mariano v. Garafin, A.M. No. RTJ-06-2024, October 17, 2006, 504 SCRA 605, 614.

[36] Flares v. Abesamis, supra note 28 at 313-314.

[36] Pamintuan v. Erne-Alcantara, 488 Phil. 279, 286 (2004).

[37] Id. at 284-285.

[38] Manguerra v. Arriesgado, A.M. No. RTC-04-I854. June 8, 2004, 431 SCRA 161 163.

[39] Rollo, p. 500.

[40] 2002 MANUAL FOR CLERKS OF COURT, Chapter VII, D(1).

[41] Anonymous Letter-Complaint Against Atty. Miguel Morales, A.M. No. P-08-2519, November 19, 2008, 571 SCRA 361, 385, citing 2002 MANUAL FOR CLERKS OF COURT, Chapter VII, D(1).

[42] Reyes v. Jamora, A.M. No. P-06-2224, April 30. 2010, 619 SCRA 601, 607.

[44] Section 52. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity of depravity and effects on the government service.

[43] Section 14. Return of Writ of Execution. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The return or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphasis supplied)

[44] Section 52. Classification of Offenses. - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity of depravity and effects on the government service.

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> B. The following are less grave offenses with the corresponding penalties: 1. Simple Neglect of Duty
>
> 1st Offense - Suspension 1 mo. 1 day to 6 mos.
> 2nd Offense- Dismissal

[45] CSC Resolution No. 99-1936.

[46] Santuyo v. Benito, A.M. No. P-05-1997, August 3, 2006, 497 SCRA 461, 468.

[47] Section 5. The Supreme Court shall have the following powers:

xxx

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

[48] Mondiguin v. Abad, 160-A Phil. 672; 675 (1975).

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