

**LBC BANK, THRU ITS LEGAL OFFICER ATTY. DORYLENE S. B. YARA,
COMPLAINANT, VS. JUAN C. MARQUEZ, SHERIFF IV, REGIONAL
TRIAL COURT, BRANCH 53, ROSALES, PANGASINAN, RESPONDENT.**

A.M. NO. P-04-1918 (Formerly OCA I.P.I No. 01-1172-P). December 16, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

This administrative matter arose from the letter dated May 30, 2001 of LBC Development Bank (LBC Bank for brevity), thru Atty, Dorylene Yara, to Judge Teodorico A. Bauzon of the Regional Trial Court (RTC), Rosales, Pangasinan, denouncing what she tagged as "irregularities" committed by Juan C. Marquez, Sheriff IV of the RTC, Branch 53, Rosales, Pangasinan, in the course of the foreclosure proceedings against Herminigildo Marzan.

The letter describes how the irregularities were allegedly committed:

First, Sheriff Marquez failed to send our Dagupan Branch a copy of the Notice of Sheriff's Sale Our Branch learned of the auction date scheduled last May 18, 2001, only through the representative of the newspaper publication which published the said notice of sale.

Second, Sheriff Marquez should have known about the requirement of the "two-bidder rule", therefor, he should have scheduled two (2) corresponding dates for the auction instead of only one.

Third, on May 17, 2001, ..., Sheriff Marquez went to our Dagupan Branch ... asking that the 2.5% Sheriff's Fee (Commissioner's Fee) be increased to 5%, and in return, he will produce a "dummy bidder" so that there will be no second auction.

On the day of the auction, our Officers ... personally witnessed the so-called "dummy bidder" recruited by Sheriff Marquez. He again reiterated his demand [but] ... was told that [the] Head Office did not approve his demand, Sheriff Marquez threatened that he will not anymore submit the "dummy bidder's bid" but instead declare a failure of auction so that we will be forced to re-schedule another auction date and to republish the same.(Words in bracket added)[1]

Following the submission by respondent sheriff of his written explanation on what amounts to an accusation of grave misconduct, Judge Bauzon endorsed the letter-complaint, together with respondent's explanation, to the Office of the Court Administrator (OCA). In its 1[st] Indorsement dated August 30, 2001, OCA directed respondent to submit his formal comment.

In his October 5, 2001 comment-explanation, respondent denied all the inculpatory allegations against him and prayed for the dismissal of the complaint. What he declared in his comment may be summarized as follows:

- Following the filing by LBC Bank of its petition for extra-judicial foreclosure of real estate mortgage against mortgagor Herminigildo Marzan, he (Sheriff Marquez) had the corresponding notice of sale published in the April 5, 12 and 19, 2001 issues of Country Mail, a newspaper of general circulation in Pangasinan. A notice was likewise posted in three conspicuous public places in the Municipality of Balungao where the property is

located.

- Realizing a day before the auction sale that he has not received the return card of the said notice sent to the LBC Bank, he proceeded to the bank's Dagupan branch to remind management of the auction sale and about the legal fees of 2.5% and 5% Sheriff's commissioner's fee which the Court usually collect[s] in foreclosure proceedings.

- On May 18, 2001, the bidding date, two auction sales were scheduled, the second being the extra-judicial foreclosure of real estate mortgage under ACT 3135 filed by the Rural Bank of Bayambang. At about 10:30 o'clock a.m., only the bidder for the LBC Bank auction sale was at the auction sale site. The auction sale of the Rural Bank of Bayambang proceeded first considering that the representatives of the LBC Bank were not yet around during the time. After the second call, the bank's Credit Investigator (Manolito Casingal) appeared to bid for the bank.

Mr. Casingal, however, came without the required written proposal. In order to facilitate the auction sale on that date, he (Marquez) accompanied Mr. Casingal to the MTC of Balungao, Pangasinan, to make a written bid. Along the way, Mr. Casingal exhibited a check for P6,000.00 as a litigation expenses and proposed that he and Marquez divide the proceeds of the check, provided the latter indorses the same.

- Sheriff Marquez turned down Mr. Casingal's proposal, which entailed adding the amount appearing on the check to the mortgage debt.

- Artemio Fulgasino, a bona fide bidder in the auction sale of the LBC Bank was already waiting in the place. On the third call of the bidding, the LBC Bank submitted a winning bid.

- Sheriff Marquez never approached the bank manager, let alone asked expense money from her. The five percent Sheriff's fee is the legal fees being collected by the Court.

- Immediately after the auction sale, the Sheriff's Certificate of Sale in favor of winning bidder LBC Bank, was prepared and shown to the Executive Judge of RTC Pangasinan for approval upon payment of the required legal fees. This was long before this complaint was transmitted to the Supreme Court. [2]

The OCA, upon a review of the records, expressed the view that the parties' conflicting factual allegations cannot be properly assessed merely on the basis of the records and, accordingly, recommended that the letter-complaint be referred to the Executive Judge of RTC, Urdaneta, Pangasinan for investigation, report and recommendation.[3]

As recommended, the Court, in its Resolution of August 19, 2002, referred the letter-complaint to Executive Judge Joven F. Costales of RTC, Urdaneta, Pangasinan.

EVIDENCE FOR THE COMPLAINANT:

Manolito Casingal, LBC credit investigator, stated in his affidavit, which was taken as his direct testimony, that on May 17, 2001, respondent went to the bank's branch office to inform its officials of the time and place of the scheduled public auction the following day; that respondent proposed to take care of the auction, by providing a dummy bidder, provided that the bank pay him a 5% sheriff's fee based on the amount of the bid; that on May 18, 2001, he, together with Shirley Marie Ortega, the bank's branch manager, went to the municipal hall of Balungao, Pangasinan to participate in the public auction; that it was in the office of the MTC of Balungao, Pangasinan where he prepared the bank's bid in the amount of P285,728.81.

Casingal also alleged that, while preparing the bid, respondent reiterated to him his proposal to rig the auction sale. Casingal adds that it was during that time when respondent demanded the amount of P1,000.00 as advance payment for the dummy bidder, but was told that no money is forthcoming. This negative response, according to

Casingal, prompted the respondent's retort that, without the dummy bidder, the auction would be considered non-performing and the bank would be forced to republish the notice of the sheriff's sale.

Casingal also stated having heard respondent later demanding the reduced amount of P6,000 instead of the 5% of the bank's bid price.

When cross-examined, Casingal declared that:

- It was his first time to experience a public auction conducted by a sheriff, previous auctions having been handled by the bank's legal counsel;
- A certain Artemio Fulgosino made a formal bid;
- The bank did not receive any copy of the notice of the sheriff's sale, although it was aware that the auction would be held on May 18, 2001;
- That the publication fee of the notice of the sheriff's sale in "Country Mail" had been paid by the bank; and
- That 5% of the bid price of P285,728.81 which respondent was asking amounted to P12,000.00, while the proper sheriff's fee, that is 4% of the first P4,000.00 and 2.5% on all sums in excess of P4,000.00 which they are supposed to pay was only P7,000 more or less.

Jacobo Malicdem, LBC controller, testified over-hearing respondent demanding from Mr. Casingal a flat rate of 5% sheriff's fee and of advising the latter - who sought his opinion - to call their credit and collection department in Manila for approval. He also testified on his understanding as to what constitutes the sheriff's fee.

Shirley Marie Ortega, LBC branch manager, testified telling respondent, while at the bank's premises in the afternoon of May 17, 2001, that she had no authority to approve his demand of 5% of the bid amount, but that she would refer the matter to the main office.

On another point, Ms. Ortega testified on the matter of a dummy bidder which, per respondent's account, would be for the bank's advantage. Continuing, Ms. Ortega testified about respondent declaring a failure of auction after she informed him that the bank's main office had disapproved his basic proposal.

EVIDENCE FOR THE RESPONDENT:

Testifying for respondent was Artemio Fulgosino, an employee of the Rural Bank of Balungao which is adjacent to the municipal building of Balungao. The proximity of the two office buildings enabled him to read the notice of the sheriff's sale posted in the bulletin board.

Mr. Fulgosino testified that, on May 18, 2001, he participated in the public auction by submitting his written bid for P253,912.00 even before the LBC Bank's representative arrived at the auction place. According to him, he noticed, during the proceedings, that upon the arrival of the bank's representatives at the auction site, one of them talked to respondent after which the two proceeded to the MTC of Balungao. When they returned, Mr. Fulgosino concluded, the bidding started, with LBC Bank eventually emerging as the winning bidder.

Juan C. Marquez also took the witness stand, reiterated what he stated in his October 5, 2001 explanation, and declared, in addition, that, in his 20 years as a sheriff during which he conducted about 551 extrajudicial foreclosure proceedings, he has never received or issued receipts representing sheriff's fee. He admitted going to LBC Bank, Dagupan Branch, twice: the first was when he served the notice of sale and, the second, when he filed his answer to the complaint. He denied, however, asking for the settlement of the case.

In its Report dated December 1, 2001, Investigating Judge Joven Costales recommended the exoneration of

respondent sheriff, on the strength of the following factual conclusion:

xxx [complainant] has not presented satisfactory proof to show that respondent asked for an increase from 2.5% to 5% of the fee supposed to be paid to him and that the supposed "dummy bidder" might be a genuine or legitimate bidder. The Complainant's evidence also shows that it is usual for a Sheriff to look for people to participate in the auction sale or bidding process. [Word in bracket added].

In a Memorandum of July 15, 2004 to Associate Justice Artemio V. Panganiban, the OCA stated its agreement with the findings of the Investigating Judge and recommended that respondent be admonished, with warning.

The Court is in accord with the findings of the Investigating Judge and the premises holding them together as well as the evaluation thereon of the OCA.

As may be noted, complainant bank would have respondent administratively liable for: (1) failure to give the bank a copy of the notice of the sheriff's sale; (2) not complying with the two-bidder rule, that is, for not scheduling two corresponding dates for the public auction; and (3) for extortion, by demanding a 5% sheriff's fee in return for ensuring a rigged auction participated in by a dummy bidder.

We disagree. On the matter of notice, complainant cannot plausibly be heard to complain about not having been personally notified or given a copy, if that be the case, of the notice of the sheriff's sale. For one, extant rules do not require that a mortgagee be so notified, albeit such notification is a requirement under certain circumstances with respect to the mortgagor in an extrajudicial foreclosure sale.[4] And while perhaps not on all fours, we held in *Villavicencio vs. Morales*[5] that, in extrajudicial foreclosure sales, personal notice of the auction sale is not necessary as publication of the notice in a newspaper is more than sufficient compliance with the rules.[6] While *Villavicencio* involves the issue of personal notice to the mortgagor, there is no rhyme or reason why the holding in that case should not apply to a mortgagee, as in the case of herein complainant bank.

For another, the reality is that complainant bank itself caused the publication of the notice. Its officials were not kept in the dark, but were fully aware of the date, time and place of the auction. They were, in fact, present and participated in the auction proceedings.

At any rate, it was established during the investigation that respondent, before the sale, went out of his way to inquire from bank officials whether or not they have received the notice of the sheriff's sale and to remind the bank's officials of the scheduled date of the public auction.

Regarding the complainant's contention that respondent failed to comply with the so-called two-bidder rule, Act No. 3135, as amended, which governs the extrajudicial foreclosure of mortgages on real properties sets forth the following publication requirements:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Nothing is mentioned in the aforequoted provision about the public auction of a real estate being held on two different dates. As aptly pointed out by the Investigating Judge:

As far as the "two-bidder rule" is concerned, the Court believes that the respondent is familiar with this considering that he has been a sheriff for the last twenty (20) years and had conducted Five Hundred Fifty-One (551) foreclosure proceedings. It is not an unusual proceeding that only one (1) date is scheduled for an auction sale. Since this is the proceeding being observed, the sheriff has to schedule it only once. It is to be noted that the complainant had only this first experience of a public auction sale conducted by a sheriff having admitted

that they had only public bidding conducted by a notary public.

Finally, we concur with the Investigating Judge's determination regarding the insufficiency of evidence to substantiate the complainant's charge of extortion, referring to the alleged demand by respondent for a 5% of the bid price as sheriff's fee in exchange for his providing a dummy bidder to obviate a failure-of-bidding situation. As it were, the investigation yielded the information that the other bidder, Artemio Fulgosino, was legitimate and that there was no reason to doubt the bona fides of his bid.

On the matter of fees, Section 9 (I) of Rule 141 of the Rules of Court authorized sheriffs to collect, among other fees, the following:

Sec. 9. Sheriffs and other persons serving processes. –

(I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

- On the first four thousand (P4,000.00) pesos, five (5%) per centum.
- On all sums in excess of four thousand (P4,000.00) pesos, two and one-half (2.5%) per centum.

Respondent, so complainant claims, was asking, by way of sheriff's fee, a flat rate of 5% sheriff's fee. Not so, according to respondent, inasmuch as his demand was only limited to what the court is entitled, that is, 5% on the first P4,000.00 and 2.5% on all sums in excess of P4,000.00 Respondent also admitted that, later on, he demanded the amount of P6,000.00 as his sheriff's fee.

The Court, like the Investigating Judge, has reasons to believe that this case was the product of misunderstanding between the bank officials and respondent regarding the amount of the sheriff's fee. Respondent might have indeed asked for the 5% of the bid amount but this was for the legal fees payable to the court. But even if the asking fee is pegged at 5% on the first P4,000.00 and 2.5% of all the sums in excess of P4,000.00, the amount being asked by the respondent would only be P6,000.00, a figure which is less than the supposed fee of P7,000.00, more or less.

Lest it be overlooked, it should be pointed out that respondent had prepared his report of the auction and issued a certificate of sale for approval by the Executive Judge. In the report, he stated that LBC Bank and Artemio Fulgosino participated in the public auction, with LBC Bank emerging as the higher bidder. However, the Bank was unable to secure the certificate of sale for non-payment of the sheriff's fee. Obviously, then, the problem raised in this complaint may have been brought about by the bank's unfamiliarity with the procedures of extrajudicial foreclosures conducted by sheriff.

For all that has been said, however, respondent, is not entirely without fault. The charge for extortion would have little to commend itself had he not uselessly proceeded to the bank a day prior to the scheduled sale on May 18, 2001 and engaged bank personnel in talks about sheriff's fees, which, at bottom, were really unnecessary as the rules itself fixes the same.

We have said time and again that the conduct of court personnel must, at all times, be characterized by propriety and decorum. But beyond proper decorum, such conduct must be above suspicion, the image of a court of justice being mirrored in the conduct, official or otherwise, of the men and women who work thereat.[7] Sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court. As such, it behooves them to discharge their duties with due care and utmost diligence.

Regrettably, however, respondent, in the performance of his official duties, appeared to have deviated from the

lofty standard of integrity and prudence exacted of officers of the court. While there was perhaps no actual attempt to extort, he gave complainant bank a reason to suspect his motives by repairing to the office building on the eve of an auction sale and to talk, of all things, about money matters. As a sheriff, his duty is merely to conduct the auction sale on the scheduled date. It is not his concern as to whether the complainant bank or any bidder would participate in the auction. All he has to do is to conduct the auction and submit his report on what transpired.

The foregoing considered, the Court feels that OCA's recommended sanction much have to be modified, given the negative implication spawned by respondent's inappropriate conduct. Respondent should have known that his act of discussing money matters with those interested in the outcome of the scheduled auction would, in the ultimate analysis, put the institution he was sworn to serve with fidelity in a compromising light. Still, he plodded on. What compounded matters is that respondent is not a fledgling, having served as a sheriff for more than twenty (20) years, conducting during that span some 551 extrajudicial proceedings. The sanction ought, therefore, to be higher than the recommended admonition.

WHEREFORE, respondent Juan C. Marquez is hereby FINED in the amount of Five Thousand Pesos (P5,000.00). He is ordered to be more circumspect, diligent and cautious in the performance of his official duties and is STERNLY WARNED that repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

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

[1] Rollo, pp. 3-4.

[2] Id, at pp. 21-23.

[3] Id., pp. 30-34.

[4] Sec. 15 (d), Rule 39 of the Rules of Court – (d) In all cases, written notice of the sale shall be given to the judgment debtor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by section 6 of Rule 13.

[5] 398 SCRA 314 [2003].

[6] See Note #4, supra.

[7] Lacurom vs. Magbanua, A.M. No. P-02-1646, 22 January 2003, 395 SCRA 589.

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