ELISEO SOREÑO, SR., COMPLAINANT, VS. ATTY. RHODERICK MAXINO AND NOEL TAMBOLERO, RESPONDENTS.

A.M. No. P-00-1360. January 18, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint against respondents Atty. Rhoderick Maxino, clerk of court and ex-officio sheriff of the Municipal Trial Court in Cities, Dumaguete City, and Noel Tambolero, deputy sheriff of the same court, for "robbery with hold-up" and violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019). The complaint, dated April 15, 1996, alleges that on February 28, 1996, at around 11:30 in the morning, respondents, with other persons, went to complainant's shop in Daro, Dumaguete City and, for no apparent reason except to intimidate him, respondent Maxino pulled his gun on him and his children; that respondents then took four tricycles belonging to him (complainant), saying, "Musugot ka ug dili, kuha-on nako imong mga pedicabs." ("Whether you like it or not, I will get your pedicabs."); and that when complainant asked to be shown any court order for respondents' actions, respondent Maxino replied, "Ako ang Korte." ("I am the court.") The complaint also alleges that a letter was sent to respondent Maxino demanding the return of the tricycles but a few days later, complainant received a letter from one "Mucho" Uypitching in which the latter claimed ownership of the tricycles and indicated he would not return them to complainant.

In their joint comment, respondents admit having seized the four tricycles of complainant but claim that the seizure of the tricycles was made to enforce the order, dated February 26, 1996, issued by Judge Felipe T. Torres, MTCC, Branch 2, granting an extrajudicial foreclosure of mortgage filed by Ramas Uypitching Sons, Inc. It appears that the tricycles were the subject of a chattel mortgage agreement between complainant and Ramas Uypitching Sons, Inc. Respondent Maxino denied he pulled a gun on complainant and the latter's family. He said he identified himself to complainant as the city sheriff and informed the latter of the purpose of their visit. However, complainant refused to surrender the tricycles and even warned respondents that there would be bloodshed if respondents insisted on taking the tricycles. This prompted respondents to request the assistance of two policemen (PO3 Arcadio Credo and PO2 Nathaniel Rubia). When respondent Maxino presented to complainant copies of the petition for extrajudicial foreclosure, the latter got the documents and, without reading them, threw them back at respondents. One of complainant's sons then approached respondents and inquired as to the reason for the seizure. After respondents explained his mission to complainant's son, the latter pleaded with his father to surrender the tricycles. It was only then that complainant yielded to the authorities.

Respondents also claim that they tendered receipts of seizure to complainant but he refused to receive the same. On February 29, 1996, Notice of Embargo and Notice of Auction Sale were sent to complainant, but he did not appear at the auction sale held on March 11, 1996. The four tricycles were sold to Ramas Uypitching Sons, Inc. as the highest and only bidder and a Sheriff's Certificate of Sale was issued to it on March 11, 1996. Complainant failed to exercise his right of redemption over the said articles. Sworn affidavits of PO3 Arcadio Credo and PO2 Nathaniel Rubia corroborating respondents' narration of the event in question were attached to respondents'

comment.

For the foregoing reasons, respondents pray that the complaint be dismissed for lack of merit.

On June 17, 1998, the Court designated Judge Temistocles B. Diez of the Regional Trial Court, Branch 37, Dumaguete City, to investigate the case and submit a report and recommendation. In his report, dated June 30, 1999, Judge Diez recommended the dismissal of the complaint. His recommendation is concurred in by the Office of the Court Administrator in its Memorandum dated December 2, 1999.

We find the recommendation to be well-taken. It is clear that respondents seized complainant's tricycles in connection with the extrajudicial foreclosure of mortgage on the tricycles.

As the Investigating Judge states in his report:

> [The] contention of complainant is rather difficult to believe. In the first place, this is denied by respondents and his witnesses. In the second place, it would be the height of naiveté to believe that respondent Maxino or any sheriff for that matter, would execute a court order without bringing the said order, or showing it to the respondent, more so in this case which involves the seizure of four pedicabs. It must be remembered that there was an application by RUSI or Uypitching for the foreclosure of the chattel mortgage on the said pedicabs and an Order of Judge Torres approving the said application. It simply is unbelievable that respondent Maxino would just seize the four pedicabs without showing said documents and explaining to complainant why the pedicabs have to be taken. In the third place, his claim that he was not shown any papers is belied by his own witness, Jesus Javier, who declared on cross-examination that Mr. Soreño was shown some papers by Atty. Maxino, and that Mr. Soreño read it; but he cannot say whether Mr. Soreño threw it away after reading it because he did not look at him while reading the papers. (TSN-Sept. 1, 1998, pp. 10-12) In the fourth place, the pretended ignorance of complainant as to the [reason] why Maxino would get his pedicab is belied by his answer when asked:
>
> Q Why will he get your pedicab?
>
> A He did not say anything but I told him that he will have to talk first with Uypitching because I took it from Uypitching. (TSN-Aug. 18, 1998, p. 5)
>
> Complainant therefore knew that the seizure of his pedicab had something to do with his obligation concerning them with Uypitching that is why he told respondent Maxino that he will have to talk first with Uypitching. But while he said that he will talk first with Uypitching, he did not go to Uypitching. He reasoned out that he did not meet Uypitching because he believed the respondent and Uypitching had an agreement about the taking of the pedicab and he was overwhelmed by fear. Complainant, however, did not say what that fear which overwhelmed him was.

Nor is there any basis for complainant's allegations that respondents are guilty of violation of R.A. No. 3019, §3. Indeed, complainant himself appears to have abandoned this charge, because he states that:

> My complain is only about this conduct regarding the pulling out of his gun and told me that "I am the Court. I am the Judge. Whether you like it or not I am going to get the pedicab." (TSN-Aug. 18, 1998, p. 9) I am not questioning the taking of the motorcycle. What I am complaining is the manner Atty. Maxino displayed when I asked him whether there was a Court Order and he answered, "I am the Court, I am the Judge" and then he pulled his 45 caliber and cocked it and I felt lost. (TSN-Sept. 21, 1998, p. 17)

The statements of the two policemen present during the incident likewise belie complainant's allegations. Moreover, the investigating judge also found that -

> With respect to respondent Tambolero, complainant declared that during the time that respondent Maxino was executing the order, Tambolero was just at the road, about three meters away from the shop saying nothing but

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> just waiting. Respondent Tambolero's fault if it could be called it, was that he accompanied respondent Maxino in the seizure of complainant's pedicab.

It is noteworthy that the Office of the Deputy Ombudsman for the Visayas, in a resolution, dated June 25, 1997, in OMB-2-96-1257, dismissed similar charges filed by complainant against respondents.

WHEREFORE, the complaint against respondents is DISMISSED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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