

## **RENE ESPINA AND CEBU DISCOVERY BAY PROPERTIES, INC., COMPLAINANTS, VS. JUAN A. GATO, RESPONDENT.**

*A.M. No. P-02-1580. April 09, 2003*

Ponente: AZCUNA, J.

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### **AZCUNA, J.:**

Before us is a complaint filed by Rene Espina and Cebu Discovery Properties, Inc. (CDPI) against Juan A. Gato, Sheriff IV of the Regional Trial Court, Lapulapu City, for acting with manifest bias and partiality in Civil Case No. 2309-L, entitled “Concordio Bancale, et al. v. Eva Paras” while it was still pending before the Regional Trial Court, Branch 57, of Lapulapu City.

Concordio Bancale, Jr., Cesario Bancale, Felipa Bancale, Patrocinio Bancale, Felicisima Bancale, Marcos Bancale, Cornelio Bancale, Demetrio Bancale, Teofila Bancale, Ignacio Bancale, Enriqueta Jumao-as-Bancale, Pinky Bancale, Darwin Bancale, Marie Alene Bancale, Maria Ethel Bancale, Juanita Bancale-Igoy, Marta Bancale-Nuñez, Fortunata Bancale-Gemeno, Isidra Bancale, Gavino Bancale, Marcelino Bahio, Praxedes Bahio, Heraclio Bahio, Jr., Gloria Malinao, Leonarda Canada and Regina Bancale-Igoy are owners of a parcel of land in Punta Engaño, Lapulapu City, covered by Transfer Certificates of Title Nos. 36425 and 36426. They are also the plaintiffs in the civil case entitled, “Concordio Bancale, et al. v. Eva Paras.”

Except for plaintiff therein Regina Bancale-Igoy, the abovementioned persons sold their undivided interest over the subject property to complainant CDPI. The parties executed an Agreement to Sell and to Buy dated January 31, 1997, and a Deed of Absolute Sale dated August 29, 1997.

Three days prior to plaintiffs’ signing of the Deed of Absolute Sale or on August 26, 1997, Attys. Generoso A. Juaban and Francis M. Zosa, plaintiffs’ counsel, filed a motion to set attorneys’ fees at P9 million. On the very same day, the trial court granted the motion. However, on September 2, 1997, plaintiffs filed a motion for reconsideration of the said order. They alleged therein that although Attys. Juaban and Zosa were their lawyers in the abovementioned civil case, they did not conform to the said motion. Moreover, they alleged that the counsel falsely made it appear that plaintiff Regina Bancale-Igoy spoke for all of them when she conformed to the motion. She allegedly did not have the authority of the other plaintiffs to conform to their counsel’s motion to set the attorneys’ fees at P9 million.

Plaintiffs’ motion for reconsideration was, however, denied by the trial court on the ground that said order had already become final and executory. Hence, pursuant to the said order, the trial court issued a writ of execution addressed to respondent sheriff dated October 14, 1997, which states as follows:

WHEREAS, on August 26, 1997, this Court issued an order which reads as follows:

“As prayed for by Retired Judge Generoso A. Juaban and Atty. Francis M. Zosa, their attorney’s fees is hereby fixed at P9 million pesos, to be taken from the money due from the buyer to the sellers under the agreement to buy and sell.

Furnish copies of this Order to Judge Generoso Juaban and Francis M. Zosa, accordingly.

SO ORDERED.”

WHEREAS, on October 10, 1997, this court issued an Order which read as follows:

“Considering that the Order of this Court dated August 26, 1997 has already become final and executory, not having been appealed, the motion for execution is hereby GRANTED.

Let a Writ of Execution issue to satisfy the Order dated August 26, 1997 to enforce the same fixing the attorney’s fees.

Sheriff Juan A. Gato of this Branch is hereby directed to implement the Writ.

SO ORDERED.”

WHEREFORE, we command you to collect the attorney’s fees fixed by the court at P9 million pesos from the plaintiffs in this case, which is due from the buyer to the sellers under the agreement to buy and sell, plus the legal fees for the service of this writ, after payment of the sheriff’s fees to the official Cashier of the Sheriff’s Office. Thereafter, you shall render your report of the action you shall have taken on this writ within the period fixed by the rules.[1]

On October 23, 1997, respondent sheriff, to satisfy the abovementioned writ of execution, levied upon the rights, shares, interests and participation of the plaintiffs over the property under TCT Nos. 36425 and 36426. This he did, despite the fact that the writ of execution issued by the trial court specifically directed that the attorney’s fees were “to be taken from the money due from the buyer to the sellers under the agreement to buy and sell.” Respondent issued a notice of sale on execution dated October 24, 1997, which stated that the property would be sold at a public auction on November 28, 1997 at 2 o’clock in the afternoon.

A third party claim with the office of respondent sheriff was filed by complainant Rene Espina for himself and on behalf of CDPI on November 18, 1997. On November 28, 1997, the subject properties were sold at public auction to Attys. Juaban and Zosa for P9 million. A certificate of sale was issued in favor of Attys. Juaban and Zosa and the same was registered with the Registry of Deeds on December 3, 1997, in accordance with Section 25, Rule 39 of the Rules of Court.

However, before the lapse of the one-year period of redemption under Section 33 of Rule 39 of the Rules of Court, or on December 1, 1998, the trial court issued an order setting aside the order dated October 10, 1997, which considered as final and executory the order of August 26, 1997. The dispositive portion of the order states:

WHEREFORE, in view of the foregoing premises, this Court hereby sets aside the order issued in this case on October 10, 1997, which considered as final and executory the 26 August 1997 order and, in its stead, hereby gives due course to the appeal filed by the plaintiffs-movants from the order issued in this case on 22 September 1997 which in effect is an appeal from the said 26 August 1997 order.[2]

On January 27, 1999, Attys. Juaban and Zosa wrote a letter to respondent requesting him to execute a final deed of sale in their favor since no redemption was made. Respondent, in a letter dated February 4, 1999, answered that he no longer had any authority to issue the final deed of sale by virtue of the December 1, 1998 order. However, despite this knowledge, respondent still transmitted to Attys. Juaban and Zosa the Final Deed of Conveyance without the approval of the court. His letter said:

Dear Sir[s]:

Pursuant to your letter of January 27, 1999 undersigned prepared the Sheriff’s Definite Deed of Sale over the properties sold at public auction on November 28, 1997, which in effect a Certificate of Sale was issued [sic] on December 3, 1997, and was registered in the Office of the Register of Deeds for the City of Lapulapu on

December 24, 1997 at 11:20 a.m. under Entry No. 3727, Vol. XVIII, Page 290. However, when I submitted the same deed to the Presiding Judge for approval, the latter had informed undersigned that he already issued an order dated December 1, 1998 setting aside the orders of October 10 and August 26, 1997, which were the basis of the execution in Civil Case No. 2309-L.

In effect, the undersigned has no more personality in issuance of a definite deed of conveyance.

Undersigned, nevertheless, is enclosing the prepared deed without the approval of the presiding judge of this court.

Respectfully yours,

(signed)

JUAN GATO

RTC Sheriff IV[3]

In its 1<sup>st</sup> Indorsement dated December 5, 2001, Court Administrator Presbitero Velasco, Jr. directed respondent to comment on the complaint.

Respondent complied on January 18, 2002. In his Comment, he stated that from the time the Notice of Levy on Execution was filed with the Office of the Register of Deeds of Lapulapu City up to the latter part of November 1999, nobody informed him that the lots had already been acquired by CDPI. Moreover, the acquisition by CDPI of the said property was not reflected on the titles with the Office of the Register of Deeds. Neither, he added, were the issuance of new titles annotated. He further reasoned that he issued a final conveyance of the properties to Attys. Juaban and Zosa since no redemption was made and no injunctive writ against it was issued by an appellate court. He claimed, therefore, that he had no reason to withhold the issuance of the final conveyance of the aforesaid lots.

In his Report and Recommendation, the Court Administrator said that respondent cannot claim that he regularly performed his duties in this case. It was noted that the writ of execution commanding him to satisfy the attorney's fees from the money due from the buyer to the sellers was issued on October 14, 1997. Nine days later, or on October 23, 1997, respondent filed a Notice of Levy on Execution with the Register of Deeds covering the subject lots. The Court Administrator concluded that respondent's unusual zeal and precipitate decision in taking the necessary steps to transfer ownership of the lots to counsel for the plaintiffs effectively destroyed the presumption of regularity in the performance of his official duties. He further concluded that respondent's act gave Attys. Juaban and Zosa undue benefit or advantage and caused complainants undue injury.

We agree.

Firstly, the haste with which respondent levied upon the plaintiffs' property is unexplained.[4] Furthermore, despite a third-party claim filed by complainant Espina for CDPI on November 18, 1997, the property was sold at public auction to Attys. Juaban and Zosa on November 28, 1997. It is true that sheriffs are responsible for the prompt service and implementation of writs and other orders issued by the court. They cannot afford to be inefficient in the work assigned to them.[5] However, prompt service and efficiency should not be reasons to compromise the integrity of the court and the proper administration of justice. By the very nature of their duties, sheriffs perform a very sensitive function in the dispensation of justice. Thus, their conduct must, at all times, be above suspicion.[6]

Secondly, as stated earlier, the trial court ordered in the writ of execution that the P9 million to be paid to Attys. Juaban and Zosa as attorneys' fees "be taken from the money due from the buyer to the sellers under the

agreement to buy and sell.” Nevertheless, respondent levied upon the aforementioned property in blatant disregard of this order. It is a well-settled rule that the duty of a sheriff is merely ministerial.[7] When a writ is placed in the hands of the sheriff, it is his ministerial duty to proceed to execute in accordance with the terms of its mandate.[8]

Thirdly, when Attys. Juaban and Zosa requested respondent to issue a Final Deed of Conveyance to them, respondent already knew that he no longer had authority to issue the same. He had already been appraised of the fact that a subsequent order, dated December 1, 1998, set aside the orders that were the basis of the writ of execution. This was admitted by him in his letter to Attys. Juaban and Zosa. Despite this knowledge, he still issued a final deed of sale in favor of the said lawyers without the approval of the court.

From all these facts, it is clear that respondent showed manifest partiality in favor of Attys. Juaban and Zosa, giving them unwarranted benefit, advantage and preference and that, with evident bad faith, he caused undue injury to complainants. Respondent thereby failed to comply with the strict standards required of public officers and employees.

WHEREFORE, respondent Sheriff Juan Gato is found GUILTY of grave abuse of official functions and manifest partiality amounting to grave misconduct and conduct prejudicial to the administration of justice, and is hereby **SUSPENDED FROM SERVICE FOR THREE (3) MONTHS WITHOUT PAY**, with the warning that repetition in the future of the same or similar misconduct will be dealt with more severely.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Carpio, JJ., concur.

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[1] Annex “F” of Complaint; rollo, p. 37.

[2] Annex “I” of the Complaint; rollo, p. 44.

[3] Annex “M” of the Complaint; rollo, p. 52.

[4] Annex “G” of Complaint; rollo, p. 38.

[5] Oliveros v. San Jose, A.M. No. P-02-1582, January 28, 2003.

[6] Castro v. Bague, A.M. No. P-99-1346, June 20, 2001.

[7] Ducat v. CA, 322 SCRA 695 (2000).

[8] Jason v. Ygaña, 337 SCRA 264 (2000).

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