

**PNB MANAGEMENT AND DEVELOPMENT CORPORATION
REPRESENTED BY ATTY. ARNOLD NAVAL, COMPLAINANT, VS.
CARMELO CACHERO, SHERIFF IV, REGIONAL TRIAL COURT,
MANILA, BRANCH 11 AND LUISITO G...**

A.M. NO. P-03-1731. November 30, 2006

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PER CURIAM:

On 10 June 2002, PNB Management and Development Corporation ("PNB Madecor") filed this administrative complaint against respondents Carmelo Cachero ("Cachero"), Sheriff IV, Regional Trial Court (RTC) of Manila, Branch 11, and Luisito Gallardo ("Gallardo"), Sheriff IV, RTC of Manila, Branch 38 ("trial court"). PNB Madecor accused Cachero and Gallardo of grave misconduct relative to the execution of the trial court's decision in Civil Case No. 96-72685 entitled "Gerardo Uy v. Pantranco North Express, Inc."

In that case, the trial court ordered Pantranco North Express, Inc. (PNEI) to pay Gerardo Uy ("Uy") P8,397,440.95 consisting of P4,660,558 as principal obligation, P2,057,394.76 as interest, and P1,679,488.19 in attorney's fees.[1] PNEI, however, had an existing credit against PNB Madecor in the principal amount of P7,884,921.10. Thus, Gallardo levied on three parcels of land owned by PNB Madecor and sold them at auction on 24 May 2002.

PNB Madecor claimed that respondents were unduly partial to Uy, based on the following irregularities that allegedly occurred in connection with the execution sale:

- The Notice of Sheriff's Sale[2] ("notice of sale") prepared by Gallardo stated that the amount to be recovered was the entire amount of the judgment award, or P8,397,440.95. Gallardo disregarded a previous levy of P365,000 from the sale of real property owned by PNEI. Instead, Gallardo sold all three properties of PNB Madecor for P15,100,000.
- The notice of sale listed three properties of PNB Madecor with a total zonal valuation of P146,373,750, an amount grossly disproportionate to the total judgment award.
- Cachero, branch sheriff of RTC Branch 11, presided over the entire proceedings without an order from the presiding judge appointing him as a special sheriff, in violation of Supreme Court Administrative Order No. 12.[3]
- Before the actual sale, the notice of sale was not read in its entirety, particularly the portion stating the amount to be recovered and the technical description of the real properties to be sold.
- Respondents acknowledged and accepted a bid from a certain Richard Tan ("Tan") although Tan did not give any cash payment but presented only a bank certification of his time deposit worth P20,000,000.
- After the execution sale, Gallardo did not report to work. Two weeks after the sale, Gallardo still had not submitted a return on the proceedings nor accounted for the proceeds of the sale despite written demands from PNB Madecor.

On 26 June 2002, the Office of the Court Administrator (OCA) required respondents to comment on the charges.[4]

In his Comment[5] dated 12 August 2002, Cachero stated that he "merely assisted" Gallardo who was then in full control of the proceedings. Cachero stressed that several persons witnessed the execution sale, including Branch Clerk of Court Jesusa Maningas ("Atty. Maningas"); Assistant Branch Clerk of Court Jennifer dela Cruz-Buendia ("Atty. dela Cruz-Buendia"); PNB Madecor's counsel Atty. Anna Mirabel Santiago ("Atty. Santiago"); and PNEI's counsel Atty. Reynaldo Tansioco ("Atty. Tansioco"). All of them signed the Minutes of the Sheriff's Sale[6] ("Minutes").

For his part, Gallardo alleged that:[7]

- During the execution sale, Cachero was in the vicinity but did not actually conduct the sale.
- The sale of PNB Madecor's three properties for P15,100,000 did not produce excess proceeds. The proceeds only partially satisfied the debt owing Uy, based on a Statement of Account[8] ("statement of account") provided by Uy where costs of litigation and interest caused the original judgment award to balloon to P15,124,934.13.
- He filed a leave of absence from work immediately after the execution sale due to "deathly (sic) threats he had received from an unidentified but obviously identifiable party."
- He accepted Tan's bid without objection from Atty. Santiago who was shown the bank certification disclosing that Tan had a premium time deposit of P20,000,000 "free from any lien and/or restriction." Such mode of payment is legally acceptable based on Section 9, Rule 39[9] of the Rules of Court ("Rules"). Moreover, it was physically difficult for Tan to carry with him to the sale a very large amount of cash.
- He promptly converted into cash the bid price. The Clerk of Court received the corresponding legal fees for the collection on the office day immediately following, i.e., on 27 May 2002.[10] Uy received the rest of the proceeds, as evidenced by an acknowledgment receipt also dated 27 May 2002.[11]

In its Consolidated Reply[12] dated 28 November 2002, PNB Madecor attached a letter from Atty. Maningas and Atty. dela Cruz-Buendia stating that "both [Gallardo and Cachero] were present in said auction, and were standing side by side x x x." PNB Madecor alleged that Gallardo did not present the affidavit of publication and certificate of posting prior to the conduct of the execution sale. Neither did Gallardo furnish PNB Madecor a copy of the statement of account, which presented "an exorbitant claim of almost double the value of the award in the decision."

Before the period for redemption lapsed, the Philippine National Bank (PNB) offered to redeem the properties based on the contract of pledge[13] on PNB Madecor shares of stock between PNB, as pledgee, and Mega Prime Realty and Holdings Corporation ("Mega Prime"), as pledgor. This contract of pledge was executed to secure a loan agreement[14] between PNB and Mega Prime. It appears that Mega Prime contracted the loan to buy all of PNB's stockholdings in PNB Madecor, including the pledged shares and the auctioned real properties.

On 20 February 2003, Gallardo executed a Certificate of Redemption[15] ("certificate of redemption") in favor of PNB.

In its Supplemental Complaint dated 18 March 2003, PNB Madecor assailed the issuance of a certificate of redemption to PNB. PNB Madecor claimed that PNB had no personality to redeem the properties as "successor in interest under a contingent or inchoate right of Mega Prime" because the contract of pledge covered PNB Madecor shares and not the auctioned real properties. Even assuming that PNB had the right to redeem, PNB Madecor claimed that PNB's notice and offer to redeem ("offer to redeem")[16] was fatally defective. PNB failed

to attach to its offer to redeem either a certified true copy of a judgment or final order with an attachment or levy on execution annotated on the title to the properties, or a certified true copy of a deed with a memorandum reflecting a mortgage or other lien covering the properties.

Gallardo defended PNB's right to redeem the properties, stating that the value of the PNB Madecor shares pledged to PNB were backed up by the properties. Gallardo claimed that since neither PNB Madecor nor Mega Prime had given notice to redeem, title to the properties ran the risk of being consolidated in favor of Tan or another third party, which would then render PNB Madecor shares "practically worthless." Furthermore, Gallardo pointed out that Mega Prime had filed a suit with the Regional Trial Court of Malabon City ("RTC of Malabon") docketed as Civil Case No. 2793-MN seeking to annul the contract of sale it had executed with PNB. On 21 December 1999, the RTC of Malabon rendered a decision declaring the sale "void and rescinded." [17] Gallardo asserted that PNB had an inchoate interest to the properties not only as pledgee of PNB Madecor shares, but also as their owner in the event that the contract of sale is finally declared void.

On 22 July 2003, the OCA transmitted its report to this Court, recommending that both Gallardo and Cachero be dismissed from the service for grave misconduct based on the following findings:

- Both respondents admitted that Cachero rendered assistance during the execution sale, although Cachero had no special authority.
- Gallardo should have submitted to the trial court for approval the addition of interests and costs of litigation to the judgment award, as reflected in Uy's statement of account. Because of the amended computation, PNB Madecor suffered great prejudice since it had to answer for a liability more than the garnished debt.
- Respondents accepted Tan's bid although the latter presented only a certification from his bank stating the amount of his deposit. This error was not cured by the later payment of the bid price because a bank certification is not considered cash.

The OCA refused to take cognizance of the issue of whether Gallardo erred in allowing PNB to redeem the properties, considering it as "judicial in nature." On 25 August 2003, we resolved to docket the case as a regular administrative matter. Both PNB Madecor and respondents manifested their willingness to submit the case based on the pleadings and the records.

We agree with the findings and recommendations of the OCA.

Indisputably, the trial court did not issue any order appointing a special sheriff for the execution sale of PNB Madecor's real properties scheduled on 24 May 2002. In the absence of such order, only Gallardo had authority to conduct the sale. As the OCA correctly stated:

x x x x

On the alleged participation of respondent Cachero in the conduct of the execution sale, paragraph (3) of Administrative Circular No. 12, 01 October 1985 [18] provides:

The judge of the Regional Trial Court, Metropolitan Trial Court and the Metropolitan Trial Court in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the Office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another branch without first securing the consent of the presiding judge thereof.

In the instant case, while respondent Gallardo denied respondent Cachero's participation in the subject execution sale, the latter nevertheless admitted having assisted the former in the conduct of said sale. It should be stressed herein that being the sheriff of Branch 28, RTC, Manila, respondent Gallardo is tasked to conduct the subject execution sale and should not have allowed respondent Cachero or any other sheriff of RTC,

Manila to participate therein.[19]

PNB Madecor alleges that it was Cachero who "presided [over] the auction sale, accepted the bids x x x, closed the sale, declared the highest bidder and x x x personally wrote the minutes of the sale." Gallardo counters that Cachero was at the "place of the execution sale" only "incidentally." Nevertheless, Gallardo admitted that he appreciated the presence at the sale of such a "seasoned and competent" sheriff as Cachero. This statement suggests of an attempt to justify Cachero's presence, which justification would of course be unnecessary if indeed Cachero had been a mere observer at the sale.

Moreover, Gallardo's denial – based on the fact that the Minutes do not state Cachero's name – is flimsy. While the Minutes bear the signatures of the parties' representatives who were present, the Minutes do not provide an exact account of the events that transpired during the sale. Gallardo's denial cannot outweigh Cachero's admission, against his interest, that he did assist Gallardo. Even Atty. Maningas and Atty. dela Cruz-Buendia, both co-employees of Gallardo, admitted that they observed respondents standing "side by side" at the sale. Thus, we are more inclined to believe PNB Madecor's allegations on this issue.

Cachero disclaims any liability by insisting that Gallardo "was directly in full control and supervision of the entire proceedings." We find his contention untenable. The assistance Cachero rendered at the execution sale, without special authority from the trial court presiding judge, was in direct violation of Administrative Circular No. 12-85. As a court sheriff — a seasoned one at that if we are to believe Gallardo — Cachero should have known that he lacked the authority to take part at the execution sale over which another court branch had jurisdiction. By their acts, respondents not only usurped the judicial authority of the trial court to appoint a special or assisting sheriff, they also compromised the independence of their respective court branches.

Uy prepared all by himself the statement of account on which Gallardo based the amount to be recovered from the auction sale. The statement increased PNEI's total obligation from the original judgment award of P8,397,440.95 to P15,100,000 inclusive of interests, attorney's fees, and costs. Gallardo relied fully on this statement of account. There is absolutely no showing that Uy submitted the statement of account for the trial court's approval. Such approval was necessary to determine if the statement correctly represented the total amount owed to Uy. There is also no proof that PNB Madecor and the other parties to the case received notice of the statement of account.

On this matter, the OCA stated:

x x x x

With respect to the computation of the amount sought to be satisfied, the same is not the duty of the sheriff. Whether or not the respondents arrived at the correct computation of the amount sought to be satisfied by the proceeds of the execution sale is not material as they cannot be penalized for erroneous computations, but they are guilty of malfeasance. Assuming that it was the plaintiff or the judgment creditor who made the computation and submitted the statement of account, indicating the accrual of interest and cost of litigation, to the respondents, the latter were bound to submit the same for consideration and approval of the court, which has the power and authority to determine the amount to be satisfied. x x x x

By reason of the erroneous computation made by the plaintiff in the subject case, which respondents considered without the court's approval, [PNB Madecor] who is a mere garnishee was greatly prejudiced. Contrary to the provisions set forth under [the Rules of Court, PNB Madecor] was made to answer for a liability more than the garnished debt x x x. Moreover, no excess amount from the proceeds of the execution sale was returned to it.

x x x x[20]

The enforcement of a writ of execution is a ministerial duty on the part of the sheriff. However, the sheriff must also exercise prudence and caution in implementing such writ, especially where the amount sought by the prevailing party is far greater than the amount specified in the judgment. The sheriff must compute the correct amount due from the judgment obligor or garnishee based on the judgment, and then verify such amount from the court if necessary, without reliance on computations made by private individuals not duly deputized by the court.[21]

On the other hand, the Court cannot give credence to PNB Madecor's claim that there was lack of publication and posting of the notice of sale. Attached to Gallardo's Comment were the following documents: (1) an affidavit[22] executed by the publisher of the Saturday Herald, attesting to the publication of the notice of sale on 4 and 11 May 2002; and (2) a certificate of posting[23] of the notice of sale on 6 May 2002. All documents, as summarized in the Sheriff's Report[24] submitted by Gallardo, appear to be in order.

We also do not find any error in Gallardo's acceptance of Tan's bid, which indisputably was the highest among all the bids. Section 9, Rule 39 of the Rules contemplates payment not only in cash but also in any form acceptable to the judgment obligee. In other words, it is Uy, the judgment obligee, and not PNB Madecor, the garnishee, who can assail the form of payment tendered for the bid price. In view of Uy's receipt of P15,100,000 from Tan on 27 May 2002, and in the absence of any complaint from Uy, we find that the issue has become moot.

Finally, the issue of whether PNB had the right to redeem the auctioned parcels of land cannot be resolved within the confines of an administrative case. We can only determine if Gallardo exceeded his lawful authority in performing his duties as sheriff. Gallardo executed a certificate of redemption in favor of PNB based on its offer to redeem as successor-in-interest of Mega Prime and upon its claim that PNB Madecor was its wholly-owned subsidiary.[25] Gallardo assumed that PNB could redeem the properties under Section 27, Rule 39 of the Rules,[26] whether as pledgee of PNB Madecor shares or as owner of PNB Madecor assets. Whether Gallardo was legally correct in making such assumption is not an issue, and cannot be resolved, in this administrative case.

Being in the grassroots of our judicial machinery, sheriffs are in close contact with litigants. Hence, their conduct should always aim to maintain the integrity of the court.[27] Sheriffs should strictly comply with the applicable rules and circulars in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.[28]

The OCA recommends that Gallardo and Cachero be dismissed from the service, in accordance with the penalty for grave misconduct under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service.[29] While we agree that both are guilty of grave misconduct, we must differentiate the liability of each based on their individual acts. Such harsh a penalty as dismissal does not seem to be warranted in the case of Cachero, who is charged here solely for assisting Gallardo in the conduct of the execution sale. First, it was Gallardo as branch sheriff who allowed a sheriff of another branch to assist him in the performance of his official duties, without judicial sanction. Simply put, Cachero could not have assisted in the conduct of the sale without Gallardo's consent. Second, there is no proof that Cachero assented to, or even knew of, the excessive levy on the properties of PNB Madecor. Thus, the penalty of one year suspension without pay is proper.

WHEREFORE, we find respondents Luisito Gallardo, Sheriff IV, Regional Trial Court, Manila, Branch 38, and Carmelo Cachero, Sheriff IV, Regional Trial Court, Manila, Branch 11, guilty of GRAVE MISCONDUCT. We DISMISS respondent Luisito Gallardo from the service, with forfeiture of all retirement benefits except for accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. We SUSPEND respondent Carmelo Cachero for one year, with the STERN WARNING that a repetition of the same or similar act in the future shall merit a more

severe sanction.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Velasco, Jr., J., no part due to prior action in OCA.

[1] Rollo, pp. 26-28. Trial court decision dated 26 July 1995.

[2] Id. at 9-11.

[3] Should be Administrative Circular No. 12, series of 1985. Paragraph 3 of the Circular provides:

x x x x

3. The judge of the Regional Trial Court, Metropolitan Trial Court and Municipal Trial Courts in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another branch without first securing the consent of the Presiding Judge thereof;

x x x x

[4] Rollo, pp. 60-61. 1st Indorsement from the OCA.

[5] Id. at 66-67.

[6] Id. at 71.

[7] Id. at 73-83. Comment of Gallardo dated 5 August 2002.

[8] Id. at 84-85.

[9] Section 9, Rule 39 states:

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.

x x x x

(c) Garnishment of debts and credits.— x x x x

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (Emphasis supplied)

[10] Rollo, p. 99.

[11] Id. at 100.

[12] Id. at 107-117.

[13] Id. at 190-194.

[14] Id. at 196-199.

[15] Id. at 155-156.

[16] Id. at 146.

[17] Id. at 201-209.

[18] Entitled "Guidelines and Procedure in the Service and Execution of Court Writs and Processes in the Reorganized Court."

[19] Rollo, p. 218.

[20] Id. at 218-219.

[21] V. C. Ponce Co., Inc. v. Eduarte, 397 Phil. 498 (2000), citing Bagano v. Paninsoro, 316 Phil. 192 (1995).

[22] Rollo, p. 87.

[23] Id. at 89.

[24] Id. at 91-92.

[25] Id. at 146.

[26] Section 27, Rule 39 of the Rules of Court provides:

SEC. 27. Who may redeem real property sold. — Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

(a) The judgment obligor, or his successor in interest in the whole or any part of the property;

(b) A creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner.

[27] Cabanatan v. Molina, 421 Phil. 664 (2001).

[28] Torres v. Cablesuela, A.M. No. P-00-1391, 28 September 2001, 366 SCRA 171.

[29] Section 52, Rule IV of Resolution No. 991936 of the CSC, also known as the Uniform Rules on Administrative Cases in the Civil Service, which took effect on 26 September 1999.

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