

CARMENCITA GUADALUPE, COMPLAINANT, VS. GREGORIO TRONCO, CLERK OF COURT & EX-OFFICIO PROVINCIAL SHERIFF, NEGROS OCCIDENTAL, DOMINADOR DIAMONON AND JOSUE DE JOSE, DEPUTY PROVINCIA...

A.M. No. P-142. February 28, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Respondents Gregorio G. Tronco, Clerk of Court and ex-officio Provincial Sheriff of Negros Occidental, Dominador Diamonon and Josue de Jose, both deputy Provincial Sheriffs of the same province, are charged by Carmencita Guadalupe with "oppressive conduct, gross partiality and grave abuse of discretion in the performance of their official duties" in connection with the sale at public auction of an automobile on December 26, 1972, which according to complainant was conjugal property although registered in the name of her husband Teodulfo Arrieta.

This complaint was referred to Executive Judge Ernesto S. Tengco of the Court of First Instance of Negros Occidental for investigation. In his report dated November 4, 1974, it is shown that both complainant and respondents submitted their respective evidence and from the voluminous testimonies of the parties and their witnesses the following findings were arrived at by the Honorable Investigator:

"On December 9, 1972 the Branch Clerk of Court Atty. Aquiles G. Java issued an alias order of execution in Civil Case No. 8330 entitled Juanita Real vs. Teodulfo Arrieta for support in arrears amounting to P3,840.00 (Exhibit '1'). On the strength of the writ, a notice of levy on execution was issued dated December 13, 1972 (Exhibit '2') and a receipt of seizure of one (1) unit of Opel Rekord Model 1962 (Exhibit '3').

"A notice of auction sale was posted in front of the Provincial Capitol Building, with a copy served on Teodulfo Arrieta thru his brother Bobby Arrieta, another copy to Atty. Bernardo B. Pablo, counsel for Juanita Real, and copies of the said notices were likewise posted at the City Hall and also at the Post Office. (Exh. '4') The notice of auction sale shall be on December 26, 1972 between the hours of 9:00 o'clock and 10:00 o'clock in the morning in front of the Provincial Sheriff's Office at the Provincial Capitol Building, Bacolod City.

"Teodulfo Arrieta, husband of the complainant, hid the fact of seizure of the car and receipt of the notice of auction sale made by Deputy Provincial Sheriffs Dominador Diamonon and Josue de Jose on December 13, 1972, under the pretext that he would look for means by himself to get back the car, but which he failed because he was not able to borrow any amount from other persons. On December 24, 1972, his wife Carmencita discovered the notice of auction sale he hid. Teodulfo Arrieta misled his wife by his information that the automobile was at the repair shop, when in fact he was the one who drove the said car with Deputy

Sheriffs Dominador Diamonon and Josue de Jose on December 13, 1972 for delivery of possession to the sheriff.

"Because of the discovery by the complainant herein of the misrepresentation of the husband Teodulfo Arrieta, the spouses had a forlorn Christmas eve. They quarrelled."

"They called their lawyer on Christmas day, Atty. Gene Sonota about the scheduled auction sale and the latter prepared for her a Third Party Claim, which complainant and her husband picked up in the morning of December 26, 1972 from the office of Atty. Gene Sonota and had it sworn before Assistant Provincial Fiscal Lindy Diola that same morning of December 26, 1972.' " (pp. 28-29 of Report, at pp. 448-449 of Rollo)

From the testimonies of the respondents, it appears that at around 9:30 o'clock in the morning of the day of the auction sale, complainant's husband, Teodulfo Arrieta, presented to respondent Diamonon a third-party claim of Arrieta's wife, complainant herein, who contended that the car was conjugal property of the spouses. Diamonon advised Arrieta to serve a copy of the third-party claim on the judgment creditor. A few minutes before ten o'clock Atty. Pablo, lawyer of the judgment creditor, arrived and Arrieta and the lawyer talked to each other, after which Arrieta left. Inasmuch as it was already ten o'clock and in the notice the auction sale was between nine and ten o'clock in the morning, respondent Diamonon proceeded with the auction sale and the bidding was conducted by respondent Josue de Jose. The auction sale was finished at about 10 minutes after 10:00 o'clock in the morning, and the sole bidder was Atty. Bernardo Pablo who bid for the creditor, Juanita Real, in the presence of two witnesses. After the auction sale was completed, Teodulfo Arrieta arrived and presented once more the third-party claim which contained a notation that the counsel of the judgment creditor refused to receive a copy. Arrieta was informed however that the auction sale had been completed, and at that time no complaint was made by Arrieta. The certificate of sale was then prepared and the car which was an Opel Rekord 1962 model was delivered to the creditor, Juanita Real, thru her lawyer, Atty. Pablo.

Complainant contends that respondents acted with gross partiality when they did not postpone the public auction sale notwithstanding her third-party claim.

In recommending the dismissal of the charges, after appreciating and evaluating the evidence, the Investigating Judge made the following rationalization:

1. The contention of complainant's counsel that the sale at public auction between 9:00 and 10:00 o'clock in the morning of December 26, 1972 was not mandatory and could have been postponed by the sheriff at his discretion is without legal basis and is contrary to the provisions of Sec. 24, Rule 39 of the Rules of Court, to wit:

"Adjournment of sale. By written consent of debtor and creditor, the officer may adjourn any sale upon execution to any date agreed upon in writing by the parties. Without such agreement he may adjourn the sale from day to day, if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice."

because there was no showing in the instant case that the sale could not be finished for lack of time considering that the auction sale was even finished in a short span of twelve (12) minutes, more or less, and the parties did not agree on a postponement;

2. The contention of counsel for complainant that it was oppressive conduct on the part of the Provincial Sheriff to

refuse to accept the third-party claim even without proof of service of copy thereof on the judgment creditor or his counsel is contrary to the provision of Sec. 17, Rule 39 of the Rules of Court under which service to the judgment creditor or his counsel is a mandatory requirement, before the officer can accept the third-party claim;

3. The contention of counsel for complainant that the sale of the car to Atty. Pablo before 10:00 a.m. constituted gross partiality on the part of respondents considering that complainant intended to bid P1,500.00 for the car had she been advised of the auction sale before 10:00 a.m. has no legal basis because, as observed by the court, the complainant was not present in the office of the Provincial Sheriff and Atty. Pablo bought the car for his client and not for himself;

4. The contention that the sale of the car which was conjugal property of the spouses constituted oppressive conduct and grave abuse of discretion is untenable because Teodulfo Arrieta admitted that the car belonged to him and was registered in his name and the pendency of Civil Case No. 10734 for annulment of sale in another branch of the court is not conclusive evidence that the car is conjugal property;

5. The contention that there was no auction sale and that no announcement of the sale was made in front of the Provincial Sheriff's office where a substantial crowd was waiting for the auction sale is a mere reproduction of the fabricated testimonies of the complainant and her husband which the court found to be incredible. (pp. 29-31 of Report, at pp. 449-451 of Rollo)

On the basis of the evidence adduced, We find however that grave abuse of discretion was committed and that exoneration of all the respondents as recommended above is not warranted under the circumstances of the case.

While it may be correct that a levying officer is not bound to receive and act on a third-party claim unless copy thereof had been served on the adverse party, nonetheless, a judicious, sound, and dispassionate exercise of judgment and discretion should have led the respondents, more particularly, respondent Diamonon to whom the claim was shown, to delay for a few minutes or even for an hour the auction sale, to enable Teodulfo Arrieta to serve the copy on the adverse party especially since the lawyer, Atty. Pablo, was in the premises awaiting the auction sale, and considering further, that even if Atty. Pablo refused to accept copy of the claim that in itself was no reason for not accepting and acting on the claim of the herein complainant.

Furthermore, although it may be true that the car in question was registered in the name of the husband, Teodulfo Arrieta, nevertheless, the third-party claim of Carmencita Guadalupe was not absolutely without merit as she had in her favor the presumption that such personal property was conjugal in nature (Art. 160, Civil Code) and as such was owned in common by the husband and wife (Art. 143, Civil Code). Such considerations as that an obligation incurred or contracted by the husband is chargeable against the conjugal partnership only when contracted for the benefit of the conjugal partnership, otherwise, the obligation which is personal to the husband is chargeable to his separate property (Art. 161 (1) of the Civil Code), and that in the instant case, the car which was claimed by the complainant to be conjugal property was being levied upon to enforce "a judgment for support" filed by a third person, Juanita Real, against the husband, Teodulfo Arrieta, these considerations, We repeat, were material and relevant enough to justify a delay, not necessarily a postponement, of the auction sale so as to afford the claimant sufficient time to serve notice on the adverse party, and for the respondent sheriffs to require the judgment creditor to put up a bond in accordance with Section 17, Rule 39 of the Rules of Court, if the auction sale was to proceed notwithstanding the claim.

We find that there was undue haste in conducting the auction sale in question for which respondent Dominador Diamonon is to be held administratively responsible. It was deputy sheriff Diamonon who received personally the third-party claim of complainant through the latter's husband Teodulfo Arrieta, and who, from his own testimony, saw Arrieta and Atty. Pablo talking together, but still proceeded with the auction sale simply because "time was

running and the notice of auction sale stated that the auction sale will be held from 9:00 to 10:00 in the morning" (TSN, Sept. 28, 1974, pp. 11-13, 37-41).

IN VIEW OF THE FOREGOING, We hereby impose upon respondent Dominador Diamonon a FINE equivalent to his one month's salary payable within fifteen days from finality of this Decision.

With regard to respondent Gregorio Tronco, no action is taken against him taking into account the fact that he served the government for 29 years and was compulsorily retired from the service on October 1, 1975.[1]

We resolve to exonerate respondent Josue de Jose inasmuch as his sole participation was his having conducted the bidding after he was given the go-signal by the other respondent Diamonon. This respondent has in his favor 36 years of service in the government and has applied for optional retirement effective as of date of approval.[2]

Let this administrative action taken against deputy sheriff Diamonon be entered in his personal record.

So Ordered.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Action on Gregorio Tronco's application for compulsory retirement received by the Supreme Court on March 19, 1975 has been deferred until resolution of this administrative case, as per Court record.

[2] Josue de Jose's original application for optional retirement received by this Court on May 17, 1976 indicated that the same shall be effective on September 15, 1977. However, in his letter dated September 15, 1977, he stated that the effective date of his retirement shall be on the date of approval thereof by the Supreme Court. (as per Court record)

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