

ANGELO C. GUERRERO, PETITIONER, VS. ANTONIO O. MENDOZA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 56, MAKATI CITY, RESPONDENT.

A.M. NO. P-06-2262 (FORMERLY A.M. OCA I.P.I. NO. 04-2067-P). October 31, 2006

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

In the consolidated Civil Case Nos. 03-002 and 03-122, both entitled *Arlene Bedayo, et al. v. Multitel International Holdings, Inc. et al.* (the civil cases), Branch 56 of the Regional Trial Court of Makati rendered a Joint Partial Decision. The trial court thereafter issued a writ of execution directing the sale of the properties of the defendants-judgment debtors. Since the proceeds of the sale of personal properties of the defendants were insufficient to satisfy the judgment, the auction sale of the real properties of the defendants was set on April 20, 2004, notice of which, dated March 22, 2004, was published in the *Balita* newspaper.

The scheduled execution sale did not push through as the RTC of Muntinlupa, Branch 204 issued an order, in the receivership proceedings involving the real properties of the therein defendant RAB Realty Inc., which was one of the defendants in the civil cases, directing the suspension of the above-said scheduled April 20, 2004 execution sale.

On August 11, 2004, the execution sale of the real properties of the defendants in the civil cases was finally conducted by Sheriff IV Antonio Mendoza.

Getting wind of the execution sale, Angelo C. Guerrero, one of the plaintiffs in the civil cases, filed before the Makati trial court a Motion to Nullify Execution Sale, raising as irregularities the following:

- Lack of publication of the notice of sale;
- Lack of service of the notice of sale upon complainant or his counsel;
- Apparent haste in conducting the execution sale;
- Grossly inadequate price for which the subject properties were sold;
- Lack of capacity of Atty. Nelson S. Clemente, a counsel to one of the plaintiffs, to participate and bid in the execution sale;
- Lack of personality of Herarc Realty Corp. to participate, bid, and win in the execution sale; and
- Lack of sufficient qualified bidders in the execution sale.

By Order of October 15, 2004, the Makati trial court denied the motion, it finding that Sheriff Mendoza performed his duties with regularity.

Hence, arose the administrative complaint at bar of Angelo C. Guerrero, one of the plaintiffs in the civil cases,

charging respondent Sheriff Mendoza with grave misconduct, dishonesty, violation of Section 3(e), R.A. 3019, and grave abuse of authority.

In his Comment, respondent asserts that he merely followed the trial judge's Order of May 3, 2004 directing him to proceed with the auction sale of those real properties subject of the Notice of Sheriff's Sale dated March 22, 2004 which was earlier published in a newspaper of general circulation, and there was no necessity of re-publication. And he claims that all interested parties were duly served copies of the Notice of Sheriff's Sale, and that the auction sale was conducted in accordance with law.

Passing on complainant's and respondent's respective claims, the Office of the Court Administrator (OCA) came out with the following:

EVALUATION: The instant complaint is anchored on the alleged irregularities attending the auction sale executed by respondent on August 11, 2004. These irregularities raised by complainant are the following:

x x x x

These are the same irregularities raised by complainant in the Motion to Nullify Execution Sale which he filed before RTC, Makati, Branch 56 on August 17, 2004. The complainant himself admitted that the court denied the motion in the Order dated October 15, 2004 "on the grounds, among others, that Sheriff Mendoza performed in connection with the execution sale with regularity." (Complaint, p. 7[par. 15])

By filing the Motion to Nullify Execution Sale complainant and/or his counsel knew that the issues raised are judicial in nature and must therefore be addressed to the sound judgment of the court. Since the court has denied the motion, their resort is to seek judicial remedy in the appropriate court and not to assail the order through an administrative complaint against the herein respondent.

The alleged tampering of court records appears to be without basis. Complainant checked the records on August 16, 2004, the Sheriff's Partial Report however, was submitted to the court on August 18, 2004 (Annex "G," Comment). Complainant's mere suspicion is not sufficient to hold respondent administratively liable under the circumstances.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court with the recommendation that the instant complaint be DISMISSED.

This Court sees no reason to depart from the findings and recommendation of the OCA.

It bears stressing that an administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for certiorari, unless the assailed order or decision is tainted with fraud, malice or dishonesty.[1] Complainant has not, in the present case, shown that any of such elements attended the auction sale which gave rise to the present complaint. If a judge may not be subjected to an administrative investigation if the remedy of the party prejudiced by his order lies with the proper court, a fortiori respondent sheriff, who merely relied on the May 3, 2004 Order of the trial judge, may not be administratively faulted.

Santos v. Dames II[2] is instructive:

With regard to the liability of respondent Sheriff Eduardo Moreno, his duty in enforcing the writ is subject to the orders and control of a judge. The non-enforcement of the compromise decision could not be blamed on the respondent Sheriff as he was merely following the orders of his Presiding Judge, herein respondent. (Underscoring supplied)

WHEREFORE, the complaint is DISMISSED for lack of merit.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Velasco, Jr., JJ., concur.
Tinga, J., on leave.

[1] Vide *Rondina v. Bello, Jr.*, A.M. No. CA-05-43, July 8, 2005, 463 SCRA 1, 15; *Jabon v. Usman*, A.M. No. RTJ-02-1713, October 25, 2005 and A.M. OCA I.P.I. No. 03-1774-RTJ, October 25, 2005, 474 SCRA 36, 61; *De Guzman v. Dy*, A.M. No. RTJ-03-1755, July 3, 2003, 405 SCRA 311, 316.

[2] A.M. No. RTJ-93-1080, October 2, 1997, 280 SCRA 13, 18-19.

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