VENTURA O. DUCAT, PETITIONER, VS. THE COURT OF APPEALS, HONORABLE ARSENIO J. MAGPALE, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 57, AND PA...

G.R. No. 119652. January 20, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar are two consolidated cases of a petition for review on certiorari under Rule 45 of the Rules of Court, and an administrative case against a court employee for gross misconduct and/or gross negligence.

In G.R. No. 119652, petitioner brands the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 35526 as not in accord with law and jurisprudence, and a departure from accepted and usual course of judicial proceedings.

The facts that matter are as follows:

Petitioner Ventura O. Ducat ("Mr. Ducat") was defendant in Civil Case No. 5277, filed on September 30, 1983 by respondent Papa Securities Corporation ("Papa Securities") with Branch 57 of the Regional Trial Court of Makati ("trial court") to recover the sum of Three Million One Hundred Fifty-Nine Thousand Two Hundred Fifty-Three and 37/100 (P3,159,253.37) Pesos.

On June 30, 1987, the trial court came out with a Decision[3] disposing thus:

> "IN VIEW OF ALL THE FOREGOING, this Court finds that the preponderance of the evidence presented in this case is in favor of the plaintiff and hereby accordingly renders judgment in favor of the plaintiff and ordering the defendant to pay the plaintiff the principal amount of P3,159,253.37 with interest thereon at 14% per annum from August 25, 1983 until full payment, service fees of 1/2% of the debit balance computed monthly, attorney's fee and the expenses of litigation in an amount equivalent to 25% of the amount due and the cost of this suit."

The aforesaid Decision became final and executory on January 22, 1992, after appeals therefrom to the Court of Appeals and to this Court failed.

Respondent corporation then presented a Motion for Execution, which was granted below on June 18, 1992.

On July 10, 1992, the shares of stock of petitioner in "Papa Securities" were levied upon and sold for Three Hundred Sixty Thousand (P360,000.00) Pesos to Myron Papa. Ten days later, petitioner's Ayala Alabang house and lot covered by Transfer Certificate of Title No. S-78185 was levied and sold for Eight Million (P8,000,000.00) Pesos.

On September 7, 1992, petitioner's house and lot in Wack Wack, Mandaluyong, Metro Manila ("Wack Wack Property") was also sold on execution by Sheriff Rolando D. Carpio ("Sheriff Carpio") to satisfy the unpaid

balance of the judgment debt amounting to Thirteen Million One Hundred Six Thousand Five Hundred Seventy-Seven and 11/100 (P13,106,577.11) Pesos. "Papa Securities" emerged as the highest bidder for Thirteen Million Two Hundred Ninety-Four Thousand Two Hundred Sixty-Four Pesos and 31/100 (P13,294,264.31) Pesos.

On September 9, 1992, Sheriff Carpio issued a Certificate of Sale[4] in favor of "Papa Securities" to the effect that the latter did not pay anymore the bid price to the Sheriff but just credited or applied the same to the balance of the judgment debt. Said Certificate of Sale was annotated on the back of the Transfer of Certificate of Title covering the Wack Wack Property.

On September 10, 1993, the trial court issued a writ of possession to "Papa Securities" after the expiration of petitioner's period of redemption.

Meanwhile, petitioner consulted his former counsel, who discovered that the judgment debt amounted to Thirteen Million Seven Hundred Eighty-Nine Thousand Nine Hundred Sixty-Four and 73/100 (P13,789,964.73) Pesos only and not the Twenty-One Million Six Hundred Fifty-Four Thousand Two Hundred Sixty-Four and 31/100 (P21,654,264.31) Pesos levied and collected by "Papa Securities".

On September 14, 1993, petitioner presented an Urgent Omnibus Motion[5] To Annul Execution Sale Conducted on 7 September 1992; To Reconsider and Set Aside the Order dated 10 September 1993; and To Hold in Abeyance the Implementation of the Writ of Possession and Notice to Vacate of 10 September 1993, but the same was denied by the trial court in its Order[6] of November 3, 1993.

Petitioner questioned such denial in a Petition for Certiorari, docketed as CA-G.R. SP No. 32568 before the Court of Appeals. On January 31, 1994, the Court of Appeals handed down a Decision,[7] dismissing the petition for lack of merit and upholding the validity of the questioned auction sale.

Petitioner came here under G.R. No. 114871, but this Court resolved to dismiss the same on May 23, 1994[8] for non-compliance with Revised Circular No. 1-88 and with Circular No. 19-91. Petitioner's Motion for Reconsideration met the same fate because "petitioner failed to show that a reversible error was committed by the appellate court."[9] Another Motion for Reconsideration was interposed by petitioner but the same was denied with finality[10] by the Court on September 7, 1994.

On August 18, 1994, petitioner filed with the trial court an Urgent Motion to Declare Failure of Auction Sale of Defendant's Wack-Wack Property[11] and on September 14, 1994, a Position Paper[12] essentially reiterating his position that there was a failure of auction sale.

On September 26, 1994, petitioner also filed with the trial court an Urgent Motion for Protective Orders: (1) Requiring Sheriff Rolando D. Carpio to Render a Complete and Final Report; (2) Requiring Plaintiff to Pay the Excess of Bid Over Judgment Debt; (3) Declaring as Null and Void the Certificate of Sale on the Wack Wack Property dated 9 September 1992; (4) Holding in Abeyance the Resolution of Plaintiff's Motion for Writ of Possession.[13]

In compliance with the order of the Court of Appeals to make a final return, the Sheriff in the case submitted a partial compliance stating that the petitioner had a deficiency of Nine Million Nine Hundred Eighty-One Thousand Nine Hundred Twenty-Five and 69/100 (P9,981,925.69) Pesos.

On October 14, 1994, the trial court issued an Order[14] ruling on the following incidents, to wit:

> - Denying petitioner's motion to declare the auction sale of September 7, 1992 as void for the respondent court had already declared the sale to be valid;

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- Denying the prayer for the issuance of a protective order to declare the issuance by the Sheriff of the Certificate of Sale void for the auction sale has already been declared valid by the respondent court;

- Denying petitioner's oral motion for reconsideration.

- Denying private respondent's prayer to cite petitioner in contempt of court for failure to surrender the copy of the title of the Wack Wack Property.

- Noting the agreement of the parties to refer the matter of the "excess" claimed by the petitioner with the Sycip Gorres and Velayo accounting firm;

- Taking into account the manifestation of petitioner's counsel to refer to his client the matter of his shouldering 50% of the expenses for SGV;

- Noting the agreement of the parties "that the findings of SGV shall be final and that the parties will be bound by its findings and if borne out by the SGV report that there is an 'excess' then payment shall be done and the issuance of the writ of possession shall be ordered simultaneously by the Court as soon as payment is effected.

In a Manifestation and Urgent Motion to Set Parameters of Computation,[15] petitioner pleaded before the trial court to lay out the parameters for computation of the judgment debt.

On October 17, 1994, "Papa Securities" presented a Manifestation[16] below stating in paragraph 6 thereof:

"6. Despite the foregoing, and solely for the purpose of 'buying peace' and to obviate protracted discussion on the matter of whether or not there is an 'excess' and as to the amount thereof, and without in any way waiving or foregoing plaintiff's position on these matters, PAPA is offering to pay the amount of the claimed 'excess' of P7,864,299.58."

On the same date, the trial court issued an Order[17] holding:

"In view of this development, the plaintiff is therefore ordered to secure a Manager's Check payable to the defendant in the amount of P7,864,299.58 and to inform this Court of its availability to the defendant. The Alias Writ of Possession/Authority to Break Open prayed for shall issue simultaneously as soon as the Court is informed by the parties of the action taken by them in the matter of the 'excess' due the defendant."

Petitioner questioned the said order via a Petition for Certiorari and Prohibition,[18] before the Court of Appeals, but the same was denied for want of merit.

Petitioner's Motion for Reconsideration[19] was also denied by the said court.

Undaunted, petitioner has come to this Court, placing reliance on the assigned errors, that:

I

THE COURT OF APPEALS RESOLVED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH EXISTING LAWS AND JURISPRUDENCE IN DENYING, ON THE GROUND OF ESTOPPEL, PETITIONER'S PLEA TO HOLD IN ABEYANCE THE ISSUANCE OF A WRIT OF POSSESSION.

II

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN HAVING NEGLECTED OR FAILED TO RESOLVE THE ISSUE OF THE NULLIFICATION OF THE CERTIFICATE OF SALE DATED 09 SEPTEMBER 1992 AND, CONCOMITANTLY, THE GRANT TO PETITIONER OF THE RIGHT TO REDEEM THE SUBJECT PROPERTY.

III

> RESPONDENT COURT OF APPEALS ACTED IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT NULLIFYING THE SHERIFF'S CERTIFICATE OF SALE DATED 09 SEPTEMBER 1992 AND, CONCOMITANTLY, IN DENYING PETITIONER THE RIGHT TO REDEEM HIS WACK WACK PROPERTY.
>
> IV
>
> RESPONDENT COURT OF APPEALS ACTED IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT NULLIFYING THE ORDER DATED 17 OCTOBER 1994 INSOFAR AS IT ORDERED THAT ALIAS WRIT OF POSSESSION SHALL ISSUE AS SOON AS THE EXCESS OF THE BID PRICE OVER THE JUDGMENT DEBT IS PAID BY PRIVATE RESPONDENT TO PETITIONER.

To begin with, the Court takes note of the fact that petitioner and his lawyer, Atty. Elgar Cruz, were once declared guilty of indirect contempt by this Court In the Matter of Contempt Proceedings Against Ventura O. Ducat and Teng Mariano and Cruz Law Offices (G.R. No. 117266, March 13, 1997) for directly or indirectly impeding, obstructing, and degrading the administration of justice by the filing of multiple motions and raising settled issues already decided by the courts.[20] The Court, speaking through Justice Josue N. Bellosillo, said:

> "A comparison of the Urgent Omnibus Motion filed on 14 September 1993 with the urgent motion to declare failure of auction sale of the Wack Wack property filed on 18 August 1994 discloses that the latter motion merely echoed the allegations found in the former motion. Furthermore, both motions prayed for the same relief, namely, the annulment of the auction sale conducted on 7 September 1992. In effect, respondents asked the trial court in the 18 August 1994 motion to resolve an issue which has been settled by the same court as early as 3 November 1993, affirmed by the Court of Appeals on 31 January 1994, and by this Court on 11 July 1994. Equally disdainful is the fact that the motion for reconsideration of the 11 July 1994 ruling was still pending before this Court when respondents filed the 18 August 1994 motion. The foregoing actuation demonstrates defiance of the authority and dignity of this Court and disrespect of the administration of justice."

With respect to the first and fourth issues posed, the Court agrees with the Court of Appeals that the petitioner is estopped to question the order of the trial court. The facts on record bear this out.

Petitioner brought an Urgent Omnibus Motion 1) To Annul Execution Sale Conducted on 07 September 1992; 2) To Reconsider and Set Aside the Order dated 10 September 1993; and 3) To Hold in Abeyance the Implementation of the Writ of Possession and Notice to Vacate, dated 10 September 1993, on which the trial court issued an Order holding in part:

> "The Court takes note of the agreement of the parties to refer the matter of the 'excess' claimed by the defendant, with the Sycip Gorres and Velayo accounting firm in order to establish whether or not there is an 'excess'.
>
> The Court likewise takes into account the manifestation of counsel for the defendant to refer the matter to his client if he is willing to pay 50% of the expenses for SGV.
>
> The parties therefore are required to report on this incident at 2:00 p.m. on October 17, 1994.
>
> The Court likewise takes note of the agreement of the parties that the findings of SGV shall be final and that the parties will be bound by its findings and if borne out by the SGV report that there is an 'excess' then payment shall be done and the issuance of the writ of possession shall be ordered simultaneously by the Court as soon as payment is effected."

Instead of filing a petition for certiorari with the Court of Appeals to question the aforecited Order, petitioner

opted to present before the trial court a Manifestation and Urgent Motion to Set Parameters of Computation setting out the following:

> "xxx
>
> 1.4 In view thereof, defendant is constrained to give its (sic) final objection to the referral of the computation to an independent accounting firm should it entail additional expenses on his part.
>
> 2.1 In any event, assuming that this matter of computation will be referred to an independent auditor or otherwise, the court should nonetheless guide the said accountants or auditors in the computation of the judgment debt.
>
> 2.2 Hence, the court must clarify and specify, as a guide, the following:
>
> i) By law, compounding of interest is not allowed unless otherwise specifically stated in the decision, which does not appear in the present decision;
>
> ii) When does the computation of 14% interest per annum start and end;
>
> iii) When does computation of the 1/2% service fee start and end considering that the decision gave no reference point on the start of the computation on these matter; and
>
> iv) Where should attorney's fees be based, from the 'Amount due' as of the date of the Decision, or otherwise.
>
> 2.3 This is necessary in order for any party to have the same basis of computation.
>
> WHEREFORE, defendant respectfully prays that this Honorable Court set parameters for the computation of the judgment debt."

"Papa Securities" responded with a Manifestation that there is no more need to refer the matter of "excess" to Sycip Gorres and Velayo ("SGV") as it is itself admitting the excess of P7,864,299.58 if only to "buy peace." In view of such development, the trial court issued its questioned order, holding:

> "In view of this development, the plaintiff is therefore ordered to secure a Manager's Check payable to the defendant in the amount of P7,864,299.58 and to inform this Court of its availability to the defendant. The Alias Writ of Possession/Authority to Break Open prayed for shall issue simultaneously as soon as the Court is informed by the parties of the action taken by them in the matter of the 'excess' due the defendant."

It must be noted that petitioner never protested the order of the trial court referring to SGV the matter of a computation of the excess. What petitioner did not agree to is only "the referral of the computation to an independent accounting firm should it entail additional expenses on his part". There is nothing in petitioner's Manifestation specifically stating that it was not in agreement with the order of the trial court. Moreover, the tenor of petitioner's Manifestation is that petitioner is in accord with the trial court's order, such that parameters were sought only as guides in computing the excess.

When "Papa Securities" admitted the excess for the sake of "buying peace", the condition set forth by petitioner in his Manifestation was met as the computation no longer entailed additional expenses on his part. Therefore, it became necessary for the trial court to issue an alias writ of possession.

Petitioner's filing of a Manifestation and Urgent Motion to Set Parameters of Computation is indicative of its conformity with the questioned order of the trial court referring the matter of computation of the excess to SGV and simultaneously thereafter, the issuance of a writ of possession. If petitioner thought that subject order was wrong, it could have taken recourse to the Court of Appeals but petitioner did not. Instead, he manifested his

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acquiescence in the said order by seeking parameters before the trial court. It is now too late for petitioner to question subject order of the trial court. Petitioner cannot be allowed to make a mockery of judicial processes, by changing his position from one of agreement to disagreement, to suit his needs. If the parties acquiesced in submitting an issue for determination by the trial court, they are estopped from questioning the jurisdiction of the same court to pass upon the issue.[21] Petitioner is consequently estopped from questioning subject order of the trial court.

Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[22] A party, having performed affirmative acts upon which another person based his subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter.[23]

As regards the second and third issues, the Court holds that the issue of nullification of the Certificate of Sale can no longer be looked into as the same is barred by the doctrine of "law of the case", which is the practice of courts in refusing to reopen what has been decided.[24] It has been enunciated that:

> "'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." (21 C.J.S. 330) (Italics supplied).
>
> "It may be stated as a rule of general application that, where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be considered or readjudicated therein." (5 C.J.S. 1267) (Italics supplied.)
>
> "In accordance with the general rule stated in Section 1821, where, after a definite determination, the court has remanded the cause for further action below, it will refuse to examine question other than those arising subsequently to such determination and remand, or other than the propriety of the compliance with its mandate; and if the court below has proceeded in substantial conformity to the directions of the appellate court, its action will not be questioned on a second appeal...
>
> "As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing." (5 C.J.S. 1276-77) (Italics supplied.)
>
> "Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion." 5 C.J.S. 1286-87) (Italics supplied.)"

It must be noted that when petitioner's Urgent Omnibus Motion 1) To Annul Execution Sale Conducted on 07 September 1992; 2) To Reconsider and Set Aside the Order dated 10 September 1993; and 3) To Hold in Abeyance the Implementation of the Writ of Possession and Notice to Vacate, both dated 10 September 1993, was denied by the trial court, petitioner brought a petition for certiorari, docketed as CA-G.R. SP No. 32568, before the Court of Appeals, which held:

> "Finally, for all petitioner's protestations on the manner of the levy and execution sale of his Wack Wack property, the respondent court has made the following observations in its questioned order of November 3, 1993, showing that due process was afforded to petitioner Ducat, and that said petitioner is not at all an innocent victim of the wrong implementation of the law, as said petitioner claims to have been, as follows:

> 'First, the auction sale of September 7, 1992 involving the Wack Wack family home of the defendant is valid.
>
> There was a Notice of Sheriff's Sale dated August 10, 1992 made by Deputy Sheriff Rolando D. Carpio covering TCT No. 3055 (page 785 of Expediente); this Notice of Sheriff's Sale was published by Guardian Publication on August 15 and 22, 1992 (copies of the newspaper at page 792 of Expediente); the time of auction sale was fixed at 10:30 a.m. well within the time allowed by law; the proceeding was witnessed by Atty. Rolando Santos for the plaintiff and Atty. J. Jose for the defendant and the highest bidder was Papa Securities Corporation in the amount of P13,294,264.31 (page 803 of Expediente); all of which have satisfied the requirements of Section 18, in relation to Section 21 of Rule 39 of the Rules of Court for its validity. The said proceeding was likewise acknowledged to be valid by the defendant in his letter to Makati Stock Exchange on October 26, 1992 (page 917 of Expediente and marked as Annex 'A' of plaintiff's MANIFESTATION dated September 23, 1992). If ever there were defects in the proceeding of September 1992 defendant is now estopped as he was a signatory to the proceeding (page 803 and Annex 'C-2' page 913 of Expediente). Defendant therefore cannot take two positions and choose either when he deems it advantageous to him, so that, when he admitted the validity of the September 7, 1992 auction sale purposely to discharge garnishment, he should not now raise the issue of invalidity to annul the auction sale of September 7, 1992 one year after his failure to exercise his right of redemption just to stop the execution of what he claims as his family home. Allowing him would be inconsistent with the basic standard of justice."

Having lost before the Court of Appeals, petitioner appealed to this Court but to no avail. His petition was denied for failure to comply with Revised Circular 1-88 and Circular 19-91. His Motion for Reconsideration did not prosper. It was denied "as petitioner failed to show that a reversible error was committed by the appellate court."

Consequently, the validity of subject auction sale is already a settled matter, having been the subject of a petition for certiorari before the Court of Appeals and a petition for review on certiorari before this Court, both of which recourses were unsuccessful.

The Court sees through the ruse being peddled by the petitioner. No matter how craftily worded the position of petitioner is, it is easily discernible that what he seeks the Court to do is to set aside the same auction sale the validity of which has been duly settled. Setting aside the Certificate of Sale is tantamount to invalidating the auction sale as the Certificate of Sale is just a certification of what was done during the auction sale. Petitioner himself admits on page 22 of his Memorandum[25] that in praying for the cancellation of the Certificate of Sale, he, in effect, prayed for the nullification of the execution sale. This cannot be done; otherwise, there would be no end to a litigation, if settled issues may be re-opened over and over again.

> "Under the 'law of the case' concept, whatever is once irrevocably established as the controlling legal principle or decision continues to be the law of the case between the same parties in the same case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Such stability and conclusiveness given to final judgments of courts of competent jurisdiction are said to be grounded on reasons of public policy, judicial orderliness and economy as well as protection of the time and interests of the litigants. xxx"[26]

In Administrative Matter No. OCA I.P.I. 95-52-P, respondent Sheriff Rolando D. Carpio of Branch 57 of the Regional Trial Court of Makati ("respondent sheriff") stands charged for having allegedly acted fraudulently, in bad faith or with gross negligence in the sale on execution of the property of complainant Ventura O. Ducat ("complainant") and for issuing a certificate of sale in favor of another party with respect to complainant's property, despite non-payment of the bid price to the prejudice of complainant.

The administrative charge under scrutiny had its inception when respondent sheriff sold in an execution sale complainant's shares of stock with Papa Securities Corporation ("Papa Securities") for Three Hundred Sixty Thousand (P360,000.00) Pesos and complainant's Ayala Alabang Property for Eight Million (P8,000,000.00)

Pesos. Subsequently, complainant's Wack-Wack Property was sold for Thirteen Million Two Hundred Ninety-Four Thousand Two Hundred Sixty-Four Pesos and 31/100 (P13,294,264.31) Pesos for the full satisfaction of the judgment debt of Twenty-One Million Six Hundred Fifty-Four Thousand Two Hundred Sixty-Four and 31/100 (

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21,654,264.31) Pesos. In the Certificate of Sale issued in favor of the highest bidder, respondent sheriff certified that:

> "IT IS FURTHER CERTIFIED, that the aforementioned highest bidder, PAPA SECURITIES CORPORATION did not pay anymore the sum of P13,294,264.31 to the undersigned and instead credited or applied to the balance as full satisfaction of the judgment debt. xxx"

Complainant consulted his former counsel and learned that the judgment debt amounted to Thirteen Million Seven Hundred Eighty-Nine Thousand Nine Hundred Sixty-Four and 73/100 (P13,789,964.73) Pesos only. There was therefore, an excess of Seven Million Eight Hundred Sixty-Four Thousand Two Hundred Ninety-Nine and 58/100 (P7,864,299.58) Pesos. As a result, Complainant lost his property, as well as the right to redeem the same, because of respondent sheriff's alleged fraud, failure, or negligence in correctly computing the judgment debt.

In his Comment,[27] respondent sheriff contended that the filing of administrative charge is another case of forum-shopping, as complainant's counsel had previously filed cases against him with the Office of the Ombudsman and Office of the Prosecutor of Makati, which dismissed the said cases, to wit:

> "The factual findings [referring to the Decision in CA-G.R. SP No. 32568] of the Court of Appeals have resolved the issue of whether the respondents, particularly Sheriff Carpio, acted with manifest partiality, bad faith and gave undue advantage and unwarranted benefits to Papa Securities Corporation at the expense of Ducat. (cf. Pajaro v. Sandiganbayan, 160 SCRA 763, April 15, 1988)
>
> WHEREFORE, with the above considerations, it is respectfully recommended that the instant complaint be DISMISSED."[28]
>
> * * *
>
> "After a careful evaluation of the evidence adduced by the parties, the undersigned finds for the respondents. It is settled that the 07 September 1992 execution sale of Ventura Ducat's Wack Wack property is valid as shown in the order dated 03 November 1993 of the Trial Court, affirmed by the Court of Appeals in its Decision dated 31 January 1994 and later by the Supreme Court.
>
> For complainant to say now that they have been deceived or defrauded by respondents by manipulating the judicial process is unwarranted because it has been settled that complainant was afforded due process per Decision of the Court of Appeals in CA. G.R. No. 32560. Seemingly, complainant is like a broken record singing the same old tune.
>
> Anent the charge, the undersigned is of the belief that there is no abuse of confidence nor deceit employed by respondents in the circumstances surrounding the sale of the Wack Wack property as their acts were all sanctioned by the courts. The alleged excess bid in the amount of P7 million more or less could not be said as tainted with deceit as contemplated by law. Fraud, in Estafa, can never be presumed. It has to be proven by clear and positive evidence to be an essential element of Estafa under Art. 315 par. 2 (a) of the Revised Penal Code. (People vs. Salapare, C.A. OG. 4039)."[29]

When this case was referred to the Office of the Court Administrator ("OCA") for evaluation, report and recommendation, the OCA made the following observations and evaluations:

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"OBSERVATIONS AND EVALUATIONS: -

Initial study of the complaint evokes compassion for the 'plight' of the complainant. However, further examination of subject-complaint together with its annexes and the respondent's comment with its corresponding attachments, unfolds a different picture. Unseen facts of the case are now clear. We analyzed the respective positions of both parties.

Complainant is really a forum-shopper. In his intense desire to retrieve even only the Wack-Wack property which they apparently still occupy, they resorted to all possible defenses.

They have filed at the Court of Appeals a case about the same incident although it was only the deciding judge and plaintiff-buyer whom they impleaded as defendants alleging that their Wack-Wack property is a family home and should be exempted from execution under Article 155 of the New Family Code.

In the Ombudsman, Manila Office, there was a case of graft and corruption arising out of the same incident impleading respondent with two (2) others.

In the Provincial Prosecution Office of Rizal, Makati City, Metro Manila, a complaint for Estafa, along with two (2) others was also filed against respondent arising again out of the same incident.

In all these offices, the charges and petitions were all dismissed (pls. see pages 38; 115; and 119, rollo). In the Court of Appeals case, it is further stated that the Supreme Court through the Second Division has already issued a resolution in G.R. No. 100093 entitled 'Ventura O. Ducat vs. Papa Securities Corporation and the Honorable Court of Appeals' denying the complainant's petition for review (pls. see 2nd par. of p. 39, rollo).

Moreover, the issues raised, being judicial in nature, the filing of cases against the opponents of complainant in the court a quo should have stopped here, as the corresponding judicial remedies have already been taken. However, unable to 'target' respondent in the aforestated charges and appeals, as they were all dismissed, this administrative case has been lodged, apparently as an afterthought.

The decisions and resolutions dismissing the charges against respondent in the aforecited cases have exhaustive treatments of the matter. It has been declared that the allegation of excessive levy is premature and are unfounded because there is no confirmation yet or issuance of a statement from the plaintiff-buyer that the judgment debt has already been fully satisfied. Furthermore, it took the complainant some years before complaining. It just broke its silence and acquiescence when it was not able to redeem its property as the redemption period has already expired.

Barred by laches as well as by the principle of estoppel, the complainant is now ordered to continue in being silent. If this principle is not so, then there will never be ends to litigations (Lucenta vs. CFI of Bukidnon, 162 SCRA 197).

Complainant has also taken two positions and when one proved disadvantageous he again availed of the other one thought to be better. This partakes of somewhat 'playing with the court's dignity' and appears to flaunt the basic rules of good faith (Depositario v. Hervias, 121 SCRA 756). This stance, complainant adopted in his case at the Court of Appeals (CA-G.R. SP No. 32568, pls. see p. 45, rollo). Complainant first tried to attack the decision by putting up the defense of Article 155 of the Family code but conceding as to the amounts he had to pay the plaintiff-buyer. When this failed he tried another position, this time contesting the amount he had to pay the winning party.

As an addendum, the duty of a Sheriff is merely ministerial. If ever there was some confusion much later on, on the part of the complainant as to the right amount involved in the case, it's not the duty of the sheriff to come up with the complicated computation but the lookout of the complainant and his counsel. It is incredible that they would miss the alleged excess levy on the property in the whooping amount of seven million plus. Indeed, this is not respondent's fault.

> Respondent finished Bachelor of Laws, has rendered twelve (12) years government service and due for retirement come August 28, 1998.
>
> WHEREFORE, all premises considered, it is now respectfully RECOMMENDED, for the consideration of this Honorable Court that the administrative case at bar, be DISMISSED for lack of merit."[30]

A careful study and review of all the facts under scrutiny, it can be gleaned unerringly that the complainant is forum-shopping, after losing similar cases before the Ombudsman and the Prosecutor's Office of Makati. After losing his previous cases before the said offices, complainant instituted the present case in the hope of pinning down the respondent sheriff and of recovering his Wack-Wack Property.

To repeat, the Court of Appeals has already ruled in CA-G.R. SP No. 32568, on the validity of the subject auction sale on September 7, 1992.

The said decision was elevated for review but this Court denied the same for failure to comply with procedural rules and to show any reversible error.

When the Court of Appeals upheld the proceedings on the auction sale, it also absolved the respondent sheriff of any wrongdoing in the conduct thereof. If there was at all any irregularity committed by respondent sheriff, complainant should have brought the same to the attention of the Court of Appeals which court could have properly acted thereon. But complainant has not established any new circumstance to buttress his submission that the respondent sheriff is guilty of fraud and negligence. What is more, during the auction sale the complainant was duly represented by a lawyer who could have pointed out that there was an excessive levy. But as counsel for complainant never complained or objected, the auction sale proceeded, as scheduled. It bears stressing that computation of the judgment debt is not the exclusive function of the trial court but was also the duty of counsel for complainant to protect the rights of his client. Counsel having failed to object, complainant is bound by the mistake of his lawyer. Complainant's objective is merely a belated attempt to delay the execution of the judgment of the lower court, a move this court cannot countenance.

Ventura O. Ducat's dilatory moves are evident from the time of the filing of these consolidated cases of a petition for review and an administrative complaint. It is worthy to note that complainant and his counsel had been cited for contempt by this Court for impeding, obstructing and degrading the administration of justice. Let this be a stern warning to them that if they do not put a stop to their filing of petitions and complaints of the same nature, they will be meted a more severe penalty.

WHEREFORE, in G.R. No. 119652 the petition is hereby DENIED, and the Decision of the Court of Appeals in CA-G.R. SP No. 35526 AFFIRMED.

In Administrative Matter No. P-00-1358, formerly A. M. No. OCA IPI 95-52-P, the Complaint is hereby DISMISSED for want of merit.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban and Gonzaga-Reyes, JJ., concur.

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[1] Dated February 8, 1995 and penned by Associate Justice Eugenio S. Labitoria and concurred by Associate Justices Quirino D. Abad Santos and Romeo J. Callejo, Sr.; Rollo, pp. 35-47.

[2] Dated March 27, 1995; Rollo, pp. 49-51.

[3] Rollo, pp. 125-142.

[4] Rollo, pp. 144-145.

[5] Rollo, pp. 301-317.

[6] Rollo, pp. 292-296.

[7] Penned by Associate Justice Lourdes K. Tayao-Jaguros and concurred by Associate Justices Vicente V. Mendoza and Jesus M. Elbinias; Rollo, pp. 150-158.

[8] Rollo, pp. 297-298.

[9] Resolution dated August 24, 1994; Rollo, p. 299.

[10] Resolution dated September 7, 1994; Rollo, p. 300.

[11] Rollo, pp. 159-176.

[12] Rollo, pp. 492-500.

[13] Rollo, pp. 470-478.

[14] Rollo, pp. 86-87.

[15] Rollo, pp. 249-251.

[16] Rollo, pp. 83-85.

[17] Rollo, pp. 88-89.

[18] Rollo, pp. 90-120.

[19] Rollo, pp. 223-234.

[20] See Decision, Rollo, pp. 603-612.

[21] Ignacio v. Court of Appeals, 246 SCRA 242.

[22] Ayala Corporation v. Ray Burton Development Corporation, 294 SCRA 48; see Article 1431, Civil Code of the Philippines.

[23] Pureza v. Court of Appeals, 290 SCRA 110.

[24] Kilosbayan, Inc. v. Morato, 246 SCRA 540, citing People v. Pinuila, 103 Phil. 992, 999 (1958)

[25] Rollo, pp. 506-591.

[26] Tabaco v. Court of Appeals, 239 SCRA 485, 490-491.

[27] Rollo, Adm. Matter No. OCA IPI 95-52-P, pp. 83-126.

[28] Ombudsman Resolution, OMB-0-94-3263; Rollo, pp. 115-118.

[29] Memorandum for The Provincial Prosecutor, I.S. No. 94-10251, p. 2; Rollo, pp. 119-121.

[30] Penned by Deputy Court Administrator Bernardo P. Abesamis; Rollo, pp. 129-131.

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