

THIRD DIVISION

[G.R. No. 170049, March 14, 2008]

**GENEROSO A. JUABAN and FRANCIS M. ZOSA, Petitioners, vs.
RENE ESPINA and CEBU DISCOVERY BAY PROPERTIES, INC.,
Respondents.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by the late Generoso A. Juaban (Juaban), now substituted by his heirs, and Francis M. Zosa (Zosa), assailing the Decision^[1] dated 31 January 2005 of the Court of Appeals in CA-G.R. CV No. 60721, wherein the appellate court (1) made permanent the Writ of Preliminary Injunction it had earlier issued, enjoining petitioners from exercising rights of ownership over Lots No. 6720-C-2 and 6720-B-2, respectively, covered by Transfer Certificates of Title (TCTs) No. 36425 and No. 36426 of the Registry of Deeds of Lapu-Lapu City; (2) set aside the Decision of the Lapu-Lapu City Regional Trial Court (RTC), Branch 54, in Civil Case No. 4871-L which ordered the dismissal of the case; and (3) directed the RTC to undertake further proceedings in Civil Case No. 4871-L insofar as the issue of damages was concerned.

The present Petition stems from the proceedings in Civil Case No. 4871-L before the Lapu-Lapu City RTC, Branch 54, but is still directly related to two other cases, particularly, Civil Case No. 2309-L before the Lapu-Lapu RTC, Branch 27, and (2) A.M. No, P-02-1580 before this Court, which we cannot simply overlook. The direct antecedent of the present petition, Civil Case No. 4871-L before the Lapu-Lapu City RTC, Branch 54, is the last of the three cases we are presenting hereunder:

**CASE No. 1: *Bancale v. Paras*, Civil
Case No. 2309-L, Lapu-Lapu City
RTC, Branch 27**

The Heirs of Conrado Bancale filed before the Lapu-Lapu City RTC, Branch 27, a case for the recovery of the properties subject of the present Petition against a certain Eva Paras and other persons, which was docketed as Civil Case No. 2309-L. On 22 January 1996, petitioners Juaban and Zosa entered their appearance as counsels for the Heirs of Bancale.

The Heirs of Bancale later entered into a 31 January 1997 Agreement to Sell and to Buy with respondent Rene Espina (Espina), paragraph 5 of which states:

That after the title is transferred to their names, the First Party [Heirs of Bancale] will execute an absolute deed of sale in favor of the second party [herein respondent Rene Espina] or whoever will be designated by him as the vendee for the consideration mentioned in paragraph 2

hereof. The amount of P2,000,000.00 advanced by the Second Party shall form part of said consideration.^[2]

In accordance with said Agreement, respondent Espina paid petitioners P2,000,000.00 as an advance on the purchase price for the subject properties for the benefit of the Heirs of Bancale. Respondent Espina then designated the other respondent in this case, Cebu Bay Discovery Properties, Inc. (CDPI), as the vendee of the said properties.

Later, on 1 September 1997, respondents learned that petitioners, counsels Juaban and Zosa, had filed on 26 August 1997, at around 1:10 p.m., a Motion to fix their attorney's fees in Civil Case No. 2309-L. They also learned that the Lapu-Lapu City RTC, Branch 27, had issued an Order on the very same date of 26 August 1997, at around 2:20 p.m., granting the motion and fixing petitioners' attorney's fees in the amount of P9,000,000.00. The Heirs of Bancale filed a Motion for Reconsideration, but the same was denied in an Order dated 22 September 1997. The Heirs of Bancale received a copy of the Order denying their Motion for Reconsideration on 9 October 1997, after which they filed a Notice of Appeal dated 15 October 1997. However, without waiting for the expiration of the period to appeal of the Heirs of Bancale, the Lapu-Lapu City RTC, Branch 27, issued on 10 October 1997 an Order, which states:

Considering that the Order of this Court dated 26 August 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.^[3]

The Heirs of Bancale filed another Motion for Reconsideration, this time, of the 10 October 1997 Order. Without directly ruling on this Motion, the Lapu-Lapu City RTC, Branch 27, issued on 14 October 1997 a Writ of Execution directing Sheriff Juan A. Gato (Gato) to satisfy the judgment for attorney's fees in the amount of P9,000,000.00 in favor of petitioners.

On 23 October 1997, Sheriff Gato served notice that the rights, shares, interests and participation of the Heirs of Bancale in the subject properties were being levied on execution to satisfy the Writ of Execution dated 14 October 1997. This was done 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." Thereafter, Sheriff Gato issued a Notice of Sale on Execution dated 24 October 1997, announcing that the subject properties were to be sold at a public auction on 28 November 1997 at 2:00 p.m.

On 18 November 1997, respondents filed a Third Party Claim with the office of Sheriff Gato. On motion of petitioners, the Lapu-Lapu City RTC, Branch 27 fixed the sheriff's indemnity bond at P500,000.00.

On 28 November 1997, the subject properties were sold at public auction to petitioners for P9,000,000.00. The sale was registered on 3 December 1997.

On 1 December 1998, the Lapu-Lapu City RTC, Branch 27, under a new presiding judge, issued an Order resolving the Motions of the Heirs of Bancale seeking reconsideration of the previous Orders of the same court dated 22 September 1997 and 10 October 1997, and disposing thus:

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 August 26, 1997 order and, in its stead, hereby gives due course to the appeal filed by the [Heirs of Bancale] from the order issued in this case on September 22, 1997, which in effect is an appeal from the said August 26, 1997 order.^[4]

This 1 December 1998 Order is currently on appeal with the Nineteenth Division of the Court of Appeals, where it is docketed as CA- G.R. CEB CV No. 61696. The Court of Appeals Resolutions granting due course to said appeal were elevated *via* a Petition for *Certiorari*, docketed as G.R. No. 156011, still pending before this Court.

On 27 January 1999, petitioners wrote a letter to Sheriff Gato requesting him to execute a final deed of sale in their favor since no redemption of the subject properties was made. Sheriff Gato, in a letter dated 4 February 1999, answered that he no longer had any authority to issue the final deed of sale by virtue of the 1 December 1998 Order of the Lapu-Lapu City RTC, Branch 27. Nonetheless, in direct contravention of the contents of his letter, Sheriff Gato still transmitted to petitioners the final Deed of Conveyance without the approval of the trial court.

CASE No. 2: *Espina v. Gato, A.M.*
No. P-02-1580, Supreme Court

The second case is an administrative complaint filed against Sheriff Gato by respondents, for allegedly acting with manifest bias and partiality in Civil Case No. 2309-L while it was still pending with the Lapu-Lapu City RTC, Branch 27. On 9 April 2003, this Court, speaking through Associate Justice Adolfo Azcuna, held:

Firstly, the haste with which respondent levied upon the plaintiffs' property is unexplained. 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. 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.

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. 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.

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.^[5]

CASE No. 3: *Espina v. Gato*, Civil
Case No. 4871-L, Lapu-Lapu City
RTC, Branch 54

On 28 November 1997, respondents filed a complaint for injunction and damages with an application for the issuance of a temporary restraining order to enjoin, at whatever stage, the sale in a public auction of the subject properties by Sheriff Gato. Said complaint was docketed as Civil Case No. 4871-L before the Lapu-Lapu City RTC, Branch 54. Respondents claim that they were, as of the institution of said case, unaware that the subject properties had already been sold at a public auction.

On 19 December 1997, petitioners filed a Motion to Dismiss, which was granted by the Lapu-Lapu City RTC, Branch 54, in an Order dated 30 July 1998. On 2 September 1998, respondents filed a Notice of Appeal, which was given due course by the Lapu-Lapu City RTC, Branch 54, in an Order dated 7 September 1998.

Respondents' appeal before the Court of Appeals was docketed as CA-G.R. CV No. 60721. Respondents filed therein an Urgent Motion for Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction dated 19 October 1998. On 26 November 1998, the Court of Appeals issued a Resolution granting respondents' application for the issuance of a temporary restraining order, restraining Sheriff Gato from consolidating ownership over the subject properties in favor of petitioners.

On 1 December 1998, respondents filed an Urgent Manifestation/Motion dated 1

December 1998 wherein they tendered the amount of P10,962,347.20 as payment for the redemption price of the subject properties, on the condition that if the application for preliminary injunction was denied or if the case is finally resolved in favor of petitioners, the said amount shall be considered as valid tender of the redemption price of the subject properties retroacting to the date of the filing of the Manifestation/Motion. In a comment dated 17 December 1998, petitioners interposed no objection to the deposit of said amount, but excepted to respondents' claim that the tender would stop the running of interest on the redemption price.

On 15 June 1999, the Court of Appeals issued a Resolution stating that respondents' application for a writ of preliminary injunction to enjoin Sheriff Gato from consolidating ownership over the subject properties in favor of petitioners had been rendered moot in view of the 1 December 1998 Order by the Lapu-Lapu City RTC, Branch 27, in Civil Case No. 2309-L setting aside its Order dated 10 October 1997 and giving due course to respondents' appeal therein.

In the meantime, petitioners were able to acquire the Definite Deed of Sale of the subject properties from Sheriff Gato. Hence, respondents filed a Motion for Clarification and/or Reconsideration to Cite [Petitioners] in Contempt. Petitioners, however, proceeded to register the Definite Deed of Sale issued by Sheriff Gato with the Register of Deeds in Lapu-Lapu City.

In a Resolution dated 30 September 1999, the Court of Appeals granted respondents' application for a writ of preliminary injunction and enjoined petitioners from exercising rights of ownership over the subject properties, such as alienating or encumbering the same.

On 31 January 2005, the Court of Appeals rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, the Order dated July 30 1998 issued by the Regional Trial Court, Branch 54, Lapu-Lapu City, in Civil Case No. 4871-L dismissing the complaint, is hereby REVERSED and SET ASIDE.

The Writ of Preliminary Injunction issued pursuant to the Court's resolution promulgated on September 30, 1999, subject to the conditionalities therein, is hereby made PERMANENT.

The Regional Trial Court, Branch 54, Lapu-Lapu City is directed to undertake further proceedings in Civil Case No. 4871-L sofar as the issue on damages is concerned.

Costs against appellees.^[6]

Petitioners' Motion for Reconsideration of the foregoing decision was denied in a Resolution dated 20 September 2005. Hence, the present recourse, wherein petitioners bring forth the following issues for this Court's consideration:

1. Whether or not Rene Espina had a cause of action to file the Injunction and Damages Case against petitioners;