

## **FIRST DIVISION**

**[ A.M. No. P-11-2968 [Formerly OCA I.P.I. No. 10-3535-P], November 28, 2019 ]**

**SOLOMON SON, COMPLAINANT, VS. ROLANDO C. LEYVA,  
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 74, ANTIPOLO  
CITY, RIZAL, RESPONDENT.**

### **DECISION**

**LAZARO-JAVIER, J.:**

#### **The Case**

This is an administrative complaint<sup>[1]</sup> filed by Solomon Son (Son), Finance and Operations Manager of Baclaran Marketing Corporation (BMC), charging respondent Rolando C. Leyva, Branch Sheriff of Regional Trial Court (RTC) Branch 74, Antipolo City with grave misconduct, gross neglect of duty, dishonesty, gross ignorance of the law, and conduct prejudicial to the best interest of the service for levying and selling at public auction BMC's property to satisfy the money judgment against BMC amounting to P765,159.55 in Civil Case No. 1218-A. At the time of auction, the property had an assessed value of P33,395,000.00<sup>[2]</sup> and market value of P19,890,000.00.

#### **Antecedents**

In his Letter Complaint<sup>[3]</sup> dated October 28, 2010, Son essentially alleged:

In Civil Case No. 1218-A, entitled "*Mamerto Sibulo, Jr. vs. Ricardo Mendoza and Baclaran Marketing Inc.*," for damages, the RTC Br. 74, Antipolo City, Rizal ruled in favor of BMC and dismissed the complaint against it. The complaint arose from a vehicular collision between Sibulo's car and BMC's truck.<sup>[4]</sup>

Aggrieved, Sibulo appealed to the Court of Appeals (CA) under CA-G.R. CV No. 17936, sans notice to BMC. Fifteen (15) years later or on May 9, 2005, the CA reversed the RTC through its Decision<sup>[5]</sup> dated May 9, 2005. Since BMC and Son were unaware of the said appeal, the aforesaid decision became final. Thereafter, a Writ of Execution<sup>[6]</sup> dated January 16, 2006 and Order dated February 23, 2006 ordering the levy of BMC's real properties, was issued.<sup>[7]</sup>

Without demanding cash payment from BMC or proceeding against its personal properties first, respondent, on April 17, 2006 immediately sold on public auction BMC's real property under TCT No. 34587. The money judgment against BMC amounted to P765,159.55. Subject property is a prime property located along Quirino Avenue, Parañaque City. It had an assessed value of P33,395,000.00 as of April 2008 and market value of P19,890,000.00 at the time of the auction. Clearly, there was an excessive levy in violation of Section 9, Rule 39 of the Rules of Court.

Respondent thus violated: (1) Section 15(d), Rule 39 of the Rules of Court which requires written notice of sale to the judgment obligor at least three (3) days before the sale; (2) Section 9(b), Rule 39 in relation to Section 7(a), Rule 57 of the same rules when he failed to leave a copy of the order, together with the description of the property and notice that was attached, with the occupants of the property; and (3) Section 14, Rule 39 of the Rules of Court when he did not make a return to the court immediately after the property was auctioned on April 17, 2006. He only submitted his Sheriff's Report on January 17, 2007 or more than nine (9) months after the auction sale was completed. Yet, he peremptorily issued the Certificate of Sale on the day of the auction sale itself.<sup>[8]</sup>

In his Comment<sup>[9]</sup> dated January 5, 2011, respondent denied the charges. He countered that he simply performed his ministerial duty of implementing the Writ of Execution dated January 16, 2006 and the Order dated February 23, 2006.

He separately served BMC and its counsel of record, Atty. Isagani Rizon, copies of the notice of levy, writ of execution, and the February 23, 2006 Order on March 13, 2006 and March 21, 2006, respectively. But these notices were both returned unserved with corresponding notations "Baclaran Marketing does not exist" and "CNEE moved out as per S/G Tiquio."

He also sent both BMC and Atty. Rizon copies of the Notice of Sheriff's Sale at their respective addresses. These were also returned unserved with notation "returned to sender, moved."

On March 24, 2006, respondent received the certificate of posting, followed by the affidavit of publication and issues of the Truth Seekers News all pertaining to the notice of sheriff's sale. Only then did he proceed with the auction sale of the property. On April 21, 2006, he sent copies of the Certificate of Sale to BMC and Atty. Rizon. But the same were again returned to sender with corresponding notations "no such company" and "returned to sender, unclaimed." He, nonetheless, submitted his Sheriff's Report informing the court of the full satisfaction of the writ of execution and order.

At any rate, BMC was at fault when it failed to inform the court of its new address. BMC could not have expected him to serve on it a formal demand to pay in cash or to locate its personal properties when its address was in fact unknown. It was beyond his authority to determine if BMC was still conducting business on the levied property or that the levied property was in fact worth much more than BMC's obligation.<sup>[10]</sup>

In his Reply, complainant averred that respondent failed to exert all efforts to locate BMC's new office. In fact, its new office was just beside its former office. Respondent was duty-bound to determine the property's value to assess if it is sufficient to satisfy the judgment award.<sup>[11]</sup>

In his Rejoinder, respondent reiterated his arguments.

On June 16, 2011, the Office of the Court Administrator (OCA) recommended that the Letter Complaint be re-docketed as a regular administrative matter against respondent.<sup>[12]</sup>

In a Resolution dated August 17, 2011, the Court directed the parties to manifest if they were willing to submit the case for resolution on the basis of the pleadings filed. In his Manifestation dated November 16, 2011, complainant requested a formal hearing. Respondent, on the other hand, manifested that he was willing to have the instant case submitted for resolution on the basis of the pleadings submitted.<sup>[13]</sup>

On April 4, 2013, the OCA recommended to grant complainant's request for a formal hearing and referred the case to the Executive Judge of the RTC of Antipolo City, for investigation, report, and recommendation.

### **The Report and Recommendation of the Investigating Judge<sup>[14]</sup>**

In its Report dated May 23, 2014,<sup>[15]</sup> the Investigating Judge found that there was substantial evidence to hold respondent liable for: 1) failing to make a formal demand for payment of the judgment debt and computation of lawful fees; 2) levying on BMC's real property ahead of its available personal properties; and 3) excessively levying BMC's property.

The Investigating Judge found that respondent violated the procedure outlined in Section 9, Rule 39 of the Rules of Court. Respondent failed to demand payment of the monetary judgment from BMC before proceeding with the levy itself. He also failed to levy on BMC's personal properties first before proceeding against the subject real property. Hence, the levy thereon was premature. A sheriff who failed to limit the properties to be levied to the amount called for in the writ is guilty of misconduct,<sup>[16]</sup> viz:

Thus, the administrative charges against respondent Sheriff [were] proven and [have] more than sufficient basis for disciplinary action. In fact, in the hearing of this case before the OCA, the recommendation is to find respondent Leyva GUILTY of Gross Neglect of Duty, who should be meted the penalty of six (6) months and one (1) day suspension without pay.

#### **RECOMMENDATION:**

In view of the foregoing attendant facts, this Office adopts the recommended penalty of your Honorable Division<sup>[17]</sup> with addition of a fine of Ten Thousand (P10,000.00) Pesos with a stern warning that a repetition of the same or similar acts would be dealt with more severely.  
<sup>[18]</sup>

### **The Report and Recommendation of the Office of the Court Administrator (OCA)<sup>[19]</sup>**

The OCA found respondent guilty of gross neglect of duty for failure to follow the mandatory procedure in the execution of a money judgment and for making an excessive levy on BMC's real property which had a fair market value of P19,890,000.00 as compared to the judgment debt in the amount of only P765,159.55. Thus, the OCA recommended:

Rule 10, Section 47 (items 1, 2 and 4) of the Revised Rules of Administrative Cases in the Civil Service treats of the penalty of fine in place of suspension and never as an additional or accessory penalty in view of modifying circumstances. An educated though limited review of existing jurisprudence reveals that the penalty of a fine is not imposed in addition to another penalty such as suspension but rather in lieu thereof. Hence, this Office is of the view that the recommendation of the Investigating Judge that respondent Sheriff Leyva be fined in the amount of P10,000.00 (emphasis ours) in addition [to] the six (6) months and one day suspension is not in order.

Recommendation: It is respectfully recommended for the consideration of this Honorable Court that respondent Rolando C. Leyva, Sheriff IV, Regional Trial Court, Branch 74, Antipolo City, Rizal be found GUILTY of gross neglect of duty and be meted the penalty of suspension for six (6) months and one (1) day without pay with a STERN WARNING that a repetition of the same or any similar act would be dealt with more severely.<sup>[20]</sup>

### **Ruling**

The Court adopts the Report and Recommendation of the OCA.

Records show that respondent failed to follow the procedures laid down under Section 9, Rule 39 of the Rules of Court for the proper implementation of the writ of execution and Section 11, Rule 13 of the same rules for the proper service of notices as discussed by the Investigating Judge and the OCA. Respondent, therefore, is liable for gross neglect of duty and gross incompetence in the performance of his official duties.

**First.** Section 9, Rule 39 of the Revised Rules of Court prescribes the procedure for executing judgments for money, viz.:

**Section 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. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

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(b) *Satisfaction by levy. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment oblige, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed, of for value and not otherwise exempt from*

execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, *the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.*

*The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.*

*When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, **he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.***

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

xxx            xxx            xxx

(Italics and emphasis supplied.)

The rule commands that the executing officer shall enforce the judgments for money in this order: First, the officer must demand from the judgment obligor to pay in cash the judgment obligation; Second, if the judgment obligor fails to pay in cash, the officer shall proceed to levy on the personal properties of the judgment obligor; and Third, if there are no personal properties, the officer shall then levy on the real properties of the judgment obligor.

Here, respondent did not attempt to demand from BMC or complainant Son for payment of the judgment obligation nor levy on BMC's personal properties. Instead, respondent immediately sent BMC and its counsel on record, Atty. Isagani Rizon, copies of the notice of levy, writ of execution and Order, respectively. Albeit, they were all returned to sender.

Respondent, nonetheless, claims that it was futile to demand a cash payment from BMC allegedly because its address was unknown. In fact, the notices he sent were allegedly all returned to sender. Nothing here, however, justifies respondent's patent violation of the procedure in the execution of judgment for money. This only shows that respondent directly sent notice of levy, instead of demanding for cash payment first.

Well-settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed to execute them in accordance with the rules. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the sheriff – he must see to it that its mandate is obeyed.<sup>[21]</sup>

**Second.** Even respondent's service of the notices was also improper. Under Section 5<sup>[22]</sup> of Rule 13 of the Revised Rules of Court, service of notices shall either be done personally<sup>[23]</sup> or by registered mail.<sup>[24]</sup> Here, aside from failing to demand cash