

## EN BANC

**[ A.M. No. P-17-3639 (Formerly OCA I.P.I. No. 14-4314-P), January 23, 2018 ]**

**MA. CECILIA FERMINA T. ROXAS, COMPLAINANT, V. ALLEN FRANCISCO S. SICAT, SHERIFF III, OFFICE OF THE CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, ANGELES CITY, PAMPANGA, RESPONDENT.**

## DECISION

### PER CURIAM:

On July 17, 2014, complainant Ma. Cecilia Fermina T. Roxas, Manager and Corporate Secretary of ROTA Creditline Finance Corporation (*ROTA*), filed a letter-complaint<sup>[1]</sup> with the Office of the Court Administrator (*OCA*)-Legal Office against respondent Allen Francisco S. Sicat, Sheriff III, Office of the Clerk of Court, Municipal Trial Court in Cities (*MTCC*), Angeles City, Pampanga, charging him with gross inefficiency and gross misconduct relative to Civil Case No. 10-826, entitled *ROTA Creditline Finance Corp. v. Arnold Cruz, et al.*

Complainant Roxas stated that ROTA, a financial institution, has been filing collection cases in the courts of Angeles City, Pampanga. Whenever its cases are decided in its favor, ROTA would acquire properties through judicial/extra-judicial foreclosure proceedings. Complainant, as ROTA's manager, would often deal with court personnel, particularly sheriffs, who would frequently ask ROTA for grease money or *padulas* before they would serve summonses and other court processes. She claimed that these sheriffs would ask for P1,000.00 supposedly to answer for their transportation and meal allowance even though these expenses are already covered by the Sheriff's Trust Fund. Moreover, sheriffs have been observed to report to the office at 11:00 a.m. and they would leave at 3:00p.m. They were sometimes spotted loitering inside Marquee Mall during office hours. They are often observed to be grossly inefficient in performing their job.

The complaint against respondent stemmed from Civil Case No. 10-826 for a sum of money filed by ROTA against Arnold Cruz, Renato Nunag and Miradora Mejia before the MTCC, Branch 2, Angeles City, presided by Judge Katrina Nora S. Buan-Factora. During the mediation proceedings of the said case on September 30, 2010,<sup>[2]</sup> only Ricky Dizon, plaintiff ROTA's representative, and defendant Miradora Mejia appeared. They entered into a Compromise Agreement,<sup>[3]</sup> which stipulated that defendants' obligation to the plaintiff is P200,539.00 to be paid in installment at P12,000.00 a month; and in the event that the defendants fail to pay two monthly installments due, the remaining obligation shall become demandable and the plaintiff is entitled to the issuance of a writ of execution for the enforcement of the Compromise Agreement. The hearing on the approval of the Compromise Agreement was set on November 11, 2010.<sup>[4]</sup> In the hearing of November 11, 2010, only Ricky Dizon and Miradora Mejia were present and they were the only

signatories in the Compromise Agreement.<sup>[5]</sup> Miradora Mejia affirmed before the court that she understood and agreed that she was the only one bound by the Compromise Agreement. On November 12, 2010, the trial court rendered a Decision<sup>[6]</sup> approving the Compromise Agreement and ordered the parties to strictly comply with the terms and conditions thereof.

On November 11, 2011, ROTA, through its counsel, filed a Motion for the Issuance of a Writ of Execution<sup>[7]</sup> in Civil Case No. 10-826 (when defendant Miradora Mejia failed to comply with the terms and condition of the Decision dated November 12, 2010). The motion was granted by the trial court on March 9, 2012.<sup>[8]</sup> On March 12, 2012, the Writ of Execution<sup>[9]</sup> was issued; ordering respondent Sheriff Sicat to cause the execution of the judgment, to levy on the goods and chattels of the defendant. After seven months, respondent issued a Levy on Execution/Attachment Replevin dated October 30, 2012, attaching a real property with a land area of 10,841 square meters located in Magalang, Pampanga. The subject property is covered by Transfer Certificate of Title (*TCT*) No. 502474-R (and registered in the names of defendant Renato Nunag and his wife Juanita Nunag). Complainant stated that after more than a year of persistent follow-up, respondent finally issued the Notice of Sheriff's Sale dated November 4, 2013 and set the Sheriff's Sale on December 10, 2013 at 10:00 a.m.

Complainant narrated that when respondent learned that the property being auctioned for bidding was a resort, he expressed interest to purchase it. Complainant told respondent that he cannot do so because of conflict of interest. In order that respondent would not be able to purchase the property, complainant increased the bid price to P2 million. Respondent issued the Certificate of Sale at the bid price of P200,539.63, which was the principal amount in the Compromise Agreement approved by the trial court on November 12, 2010. Complainant stated that the price was damaging to her, because the outstanding balance of the loan as of the date of redemption on January [14], 2015 was P715,223.57. Complainant said that respondent did not ask her the outstanding balance of the loan before the auction sale.

Moreover, complainant stated that respondent delayed the issuance of the Certificate of Sale, which she had annotated on the title of the property without reading that the sale price was only P200,539.63. When she received the certified true copy of the title, that was the only time she saw that the sale price of the said property was only P200,539.63, so she called respondent's attention to the fact that the outstanding balance of the loan was P715,223.57. Respondent told her that she should have her lawyer amend the Writ of Execution and that she should send another formal offer. On March 3, 2014, she sent another formal offer with a bid price of P720,000.00, since the outstanding balance of the loan was P715,223.57. Complainant stated that she was disappointed, because respondent has not issued a new Certificate of Sale for the amendment of the annotation on the title of the property.

In his Comment<sup>[10]</sup> dated October 14, 2014, respondent Sheriff Allen Francisco S. Sicat stated that based on the Decision of the MTCC, the amount of the judgment obligation was P200,539.63 and there was no stipulation of interest. He explained why the implementation of the writ of execution was delayed. Despite diligent efforts, no available personal properties could be found in the name of the defendant (Miradora Mejia) in the writ of execution. Complainant's representative,

Ricky Dizon, also informed him that the said defendant asked for additional time to amicably settle the obligation. When defendants failed to fulfill their promise to settle the obligation after a reasonable period of time, plaintiff ROTA, through Ricky Dizon, again requested the enforcement of the writ of execution against the real property of defendant Renato Nunag.

On October 30, 2012, a Levy on Execution<sup>[11]</sup> of real property was filed before the Office of the Register of Deeds for Angeles City. Thereafter, defendant Nunag requested plaintiff-complainant for additional time to settle the amount of P200,539.63. Upon learning that defendants failed to fulfill their promise, respondent issued a Notice of Sheriff's Sale<sup>[12]</sup> dated November 4, 2013, setting the auction sale on November 29, 2013. (However, the records show, particularly the undated Certificate of Sale<sup>[13]</sup> and the Certificate of Final Sale<sup>[14]</sup> dated January 14, 2015, that the auction sale was conducted on November 4, 2013.)

Respondent stated that defendant (Miradora Mejia) failed to attend the auction sale despite due notice. Complainant Roxas manifested that plaintiff ROTA, through complainant, was willing to bid P2 million. He then advised complainant that should plaintiff ROTA bid at P2 million, she will be obligated to refund whatever amount is in excess of the judgment obligation, which complainant was not willing to do.

As there were no other bidders during the auction sale, respondent awarded the winning bid to the complainant in the amount only of the judgment obligation (P200,539.63) and issued the Certificate of Sale on even date.

On March 3, 2014, complainant filed a letter, amending the amount of her previous bid (to P720,000.00). Justifying the sale of the property at P200,539.63, respondent stated that the Sheriff must satisfy the judgment obligation based on the decision.

Upon the recommendation<sup>[15]</sup> of the OCA, the Court issued a Resolution<sup>[16]</sup> dated December 7, 2015, referring the administrative complaint to the Executive Judge, MTCC, Angeles City, Pampanga for investigation, report and recommendation within 60 days from receipt of the records.

### **The Investigation Report of Executive Judge Katrina Nora S. Buan Factora**

The Report<sup>[17]</sup> dated April 21, 2016 of Executive Judge Katrina Nora S. Buan Factora, <sup>[18]</sup> MTCC, Angeles City, Pampanga, summarized the case, thus:

On September 30, 2010, a Compromise Agreement was entered into by Ricky Dizon (representative of the plaintiff ROTA) and Miradora Mejia (Miradora for short and one of the defendants) x x x. The approval of compromise was set for hearing on November 11, 2010, the Court inquired whether Miradora fully understood that she is the only one bound by the compromise; to which she acceded. On November 12, 2010, [a] Decision based on a Compromise Agreement was issued by the Court. On November 11, 2011, a motion for Issuance of a Writ of Execution was filed by plaintiff thru counsel and it was granted on March 9, 2012; and on March 12, 2012, a writ of execution was issued and received by the Office of the Clerk of Court on March 15, 2012.

On October 30, 2012, a Levy on Execution was issued by Sheriff Allen Francisco Sicat on TCT No. 502474-R and which was annotated in the memorandum of encumbrance on June 14, 2013. On November 4, 2013, Notice of Sheriff's Sale was issued by Sheriff Allen wherein the schedule dates of sale are November 29, 2013 and December 10, 2013; and on same date (November 4, 2013), Certificate of Postings was made by Sheriff Allen and others signed by Angelino Felix, Clerk; Rodrigo Malit, Purok Leader; Hon. Jummel Malonzo, Brgy. Captain; and Ernesto Dionisio, Brgy. Sec. On November 29, 2013, Minutes of the Auction Sale was issued wherein Ricky Dizon was present and lone bidder of the property sold at Php200,539.63 pesos. On record, there are two bid price in the sum of Php2,000,000.00 and Php 720,000.00 the latter offer of bid which was received on March 3, 2014. On January 14, 2014, [a] Certificate of Sale was issued by Sheriff Allen and it was annotated in the Memorandum of Encumbrance on same date with the showing of the assessment form; and thereafter on January 14, 2015, a Certificate of Final Sale was likewise issued.

On March 17, 2014, Ma. Cecilia Fermina T. Roxas wrote to Sheriff Allen regarding the annotation on TCT No. 502474-R on the bid price of Php200,539.63 instead of her offered bid price [of P720,000.00] which to her is damaging and so, the necessary correction should be made. Dissatisfied, on July 1, 2014, complainant Ma. Cecilia wrote to OCA-Legal pertaining to this present incident.

On the Civil Case No. 10-826, on January 29, 2015[,] a Motion for Issuance of an Order Consolidating Title to the plaintiff was filed by plaintiff through counsel Atty. Reydon P. Canlas and thereupon on March 27, 2015[,] another Entry of Appearance with opposition to plaintiff's motion for issuance of an order to Consolidate Title to Plaintiff was filed by Renato Nunag through counsel Atty. Allan Jocson; and thereafter, the said incident was considered withdrawn by both parties in the Order dated April 16, 2015.

On April 6, 2015, Ma. Cecilia wrote again to Sheriff Allen stating, as there was an overlook on defendant Renato Nunag, who is not a signatory on the Compromise Agreement and she, further, requested to lift the Levy on Execution on Nunag's property with TCT No. 502474-R and cancel the mortgage/annotation on the title c/o the Register of Deeds Pampanga. On April 8, 2015, a Notice of Lifting or Discharge of Levy on Execution Certificate of Sale was issued by Sheriff Allen and the same was annotated on the Memorandum on Encumbrance on April 10, 2015.<sup>[19]</sup>

Investigating Judge Factora found that respondent failed to follow the steps for the proper implementation of the writ of execution, since there was (1) no estimate of expenses; (2) no return on the writ of execution; hence, there was no copy of the sheriff's report furnished to the defendants involved; (3) no liquidation of sums received; (4) no notice given to the judgment obligor on the sale of the property; and (5) no filing system of the publication and other documentation. In regard to the auction sale, there are discrepancies on the date and circumstances of the auction sale showing a simulated auction sale. Moreover, the discharge of levy on the subject property was without proper motion or court order.<sup>[20]</sup>

Investigating Judge Factora discussed her findings, thus:

#### *A. The Implementation of the Writ of Execution*

In the Order<sup>[21]</sup> dated March 9, 2012 in Civil Case No. 10-826, MTCC Judge Katrina Nora S. Buan-Factora (also the Investigating Judge) granted the issuance of a writ of execution against the defendants to enforce the decision dated November 12, 2010 and directed the Sheriff of the OCC-MTCC, Angeles City "to submit an estimate of cost for the implementation of the writ of execution to be approved by this Court and such amount, thereafter, shall be deposited/paid by the plaintiff to the Office of the Clerk of Court of the MTCC pursuant to Section 10 of A.M. No. 04-2-04-SC."

However, the Investigating Judge found that no estimate of expenses was submitted to the court for its approval and/or deposited or paid to the Clerk of Court of the OCC-MTCC, despite the ruling in *Francia v. Esguerra*<sup>[22]</sup> enumerating the steps to be followed in the payment and disbursement of fees for the execution of a writ, to wit:

x x x (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the ex-officio sheriff, (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit.<sup>[23]</sup>

In this case, both complainant and respondent admitted not resorting to the system of submitting a court-approved estimate of expenses to the OCC MTCC as it is a tedious process, especially for the sheriffs. It has been a practice for ROTA, through Ricky Dizon, to be charged with the expenses without resort to the Sheriffs Trust Fund. Hence, ROTA would issue duly acknowledged Cash Vouchers,<sup>[24]</sup> signed by respondent Sheriff, to defray the expenses for the implementation of writs and for the purpose of reimbursement from their office. On the other hand, respondent Sheriff would sign and acknowledge the same even though the actual money was handled by Ricky Dizon and, likewise, to help Ricky, who; according to respondent, would be reimbursed by ROTA for expenses he advanced, and who was in dire economic distress. Sheriff Luis Gary V. Rosario and Miradora Mejia corroborated the testimony of respondent that Ricky handled the money and would plead for financial assistance, respectively.<sup>[25]</sup>

The Investigating Judge stated that the writ of execution was addressed only to Miradora Mejia as the sole defendant who signed the Compromise Agreement. Hence, respondent should have proceeded to implement the writ under Section 9 (a),<sup>[26]</sup> Rule 39 of the Rules of Court by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and lawful fees. However, the records revealed that this was not actually done as there was no showing of the receipt by Miradora Mejia of the subject writ of execution. The same records would show that there was no return of the writ, which should reflect how the writ was initially implemented. Miradora Mejia categorically denied that she received any document denominated as writ of execution. She, however, recalled