

## EN BANC

[ **A.M. No. P-16-3507 [Formerly OCA IPI No. 14-4365-P], September 25, 2018** ]

**CESAR T. DUQUE, COMPLAINANT, VS. JAARMY G. BOLUS-ROMERO AND MA. CONSUELO JOIE A. FAJARDO, CLERK OF COURT V AND SHERIFF IV, RESPECTIVELY, BOTH OF BRANCH 93, REGIONAL TRIAL COURT, SAN PEDRO, LAGUNA, RESPONDENTS.**

## D E C I S I O N

### PER CURIAM:

Before the Court is the administrative complaint brought by Cesar T. Duque (complainant) charging respondents Clerk of Court (CoC) V Jaarmy G. Bolus-Romero and Sheriff IV Ma. Consuelo Joie E. Fajardo, both of Branch 93 of the Regional Trial Court (RTC) in San Pedro City, Laguna with falsification of public documents, inefficiency and incompetence in the performance of their duties committed in relation to Civil Case No. SPL-0823 entitled *Benjamin G. Cariño v. Safeway Shuttle Service, Inc. and Cesar Duque*, an action for collection and damages.<sup>[1]</sup>

The complainant averred in his complaint-affidavit<sup>[2]</sup> that on April 29, 2002, Benjamin G. Cariño had filed in the RTC a complaint for the recovery of sum of money against him and Safeway Service Inc. (SSSI), a passenger bus company providing shuttle services to the employees of manufacturing companies located within the export processing zones of Cavite and Laguna, docketed as Civil Case No. SPL-0823; that on August 15, 2005, the RTC had rendered judgment ordering him and SSSI to pay Cariño jointly and severally the amount of P231,262.00, plus interest computed at 12% *per annum* from the filing of the complaint, and 25% of the recoverable amount as and for attorney's fee; that he and SSSI had appealed the adverse judgment in due course, but the CA had affirmed it on August 31, 2007, disposing:

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The *decision* of the Regional Trial Court of San Pedro, Laguna dated 15 August 2005 is **AFFIRMED**. The defendants-appellants are hereby ordered to pay the plaintiff-appellee, the sum of P231,262.00 plus legal interest as payment for the supplies and spare parts delivered by the plaintiff-appellee and accordingly received by the defendants-appellants. The defendants-appellants are likewise ordered to pay the plaintiff-appellee twenty-five percent (25%) of the recoverable amount as attorney's fee. Costs against the defendants-appellants.

**SO ORDERED.**<sup>[3]</sup>

and that respondent CoC Bolus-Romero had pre-empted the Presiding Judge of the RTC by issuing the writ of execution dated July 14, 2008 in Civil Case No. SPL-0823 whereby she altered the judgment to increase the "legal interest" of 6% *per annum* decreed in the CA's decision dated August 31, 2007 to "12%" *per annum* in manifest partiality and evident bad faith to benefit Cariño.<sup>[4]</sup>

As to respondent Sheriff Fajardo, the complainant declared as follows:

- 1) That he issued a falsified Notice to Pay dated July 14, 2008 giving complainant Duque and SSSI three days receipt thereof within which to pay Php 555,037.00 exclusive of interest and legal fees.
- 2) That Sheriff Fajardo issued a falsified levy dated July 28, 2008 to and served only upon "[To]: The Registrar of Deeds, Muntinlupa City" which levied complainant Duque's real property in Ayala Alabang with an appraised value then of P6,600,000.00, more or less, covered by TCT No. 29049 in the Registry of Deeds of Muntinlupa City without said notice of levy being addressed to and first served on complainant Duque.
- 3) That Sheriff Fajardo issued a Notice of Sale purportedly dated September 23, 2008 containing a printed text involving substitution of transfer certificate of real property owned by another person covered by TCT No. T-447031 located at Barangay Landayan, San Pedro, Laguna that respondent Fajardo caused to be published for the auction sale in Laguna Courier on October 27 and November 3, 2008; but that what she actually sold in a sham auction sale purportedly held on November 1, 2008 for P350,467.12 only to respondent Cariño was a different real property covered by TCT No. T-29049 located at Brgy. Ayala Alabang, Muntinlupa City, with an appraised value then of P6,600,000.00, more or less owned by complainant.<sup>[5]</sup>

The complainant further asserted that Cariño and his counsel had been guilty of bad faith because they employed various schemes of enticement to persuade the respondents to act in concert to manipulate the execution proceedings: from the issuance of the illegal writ of execution to increase the "legal rate of interest from 6% to 12%"; to the falsification of the sheriffs notice of levy and sale to cover up the sham execution sale involving substitution of titles and registration, and to the annotation of the fake certificate of sale in favor of Carino in the Registry of Deeds of Muntinlupa City.<sup>[6]</sup>

In her comment dated March 19, 2015,<sup>[7]</sup> CoC Bolus-Romero countered that the charges against her had no legal and factual bases at all. She pointed out that she

had drafted the resolution on the execution as directed by Presiding Judge Francisco Dizon Pafio of the RTC and in accordance with the dispositive portion of the decision of the CA, Fifteenth Division; that the task of ordering the execution of the judgment had devolved upon Judge Pafio as the trial judge, but she could perform the issuance and release of the writ of execution as the clerk of court because doing so was among her ministerial duties under Section 4, Rule 136 of the *Rules of Court*; and that she did not alter the dispositive portions of the judgments of the RTC and the CA, but only copied therefrom verbatim.<sup>[8]</sup>

The Office of the Court Administrator (OCA) twice required Sheriff Fajardo to comment on the complaint-affidavit dated July 22, 2014,<sup>[9]</sup> the first time, through the first Indorsement dated December 3, 2014, and the second through the 1<sup>st</sup> tracer dated July 23, 2015, but she did not comply.

### Findings of the OCA

In its evaluation and report,<sup>[11]</sup> the OCA found that respondent CoC Bolus-Romero was not administratively culpable for falsifying the dispositive portion of the CA 's decision considering that the extant records indicated that she had only copied verbatim the dispositive portions of the final judgments of the RTC and the CA; that based on the records she had not participated in the proceedings conducted after the issuance of the writ of execution; and that there was no link between her and the bogus and sham proceedings of execution.<sup>[12]</sup>

As to respondent Sheriff Fajardo, the OCA concluded that she should be held administratively liable for inefficiency and incompetence in the performance of her official duties, and for neglect of duty.<sup>[13]</sup> The OCA pointed out that the notice of sheriff's sale did not state the correct number of the Torrens title of the property to be sold; that the omission was a substantial and fatal error that invalidated the entire notice inasmuch as the purpose of the publication of the notice of sheriff's sale was to inform all the interested parties on the date, time, place of the execution sale of the real property subject of the notice; and that the omissions and lapses by respondent Sheriff Fajardo constituted inefficiency and incompetence in the performance of her official duties.<sup>[14]</sup>

Accordingly, the OCA recommended that:

- 1) the instant administrative complaint be **RE-DOCKETED** as regular administrative matter against respondent Sheriff IV Ma. Consuela Joie A. Fajardo, Branch 93, Regional Trial Court, San Pedro, Laguna;
- 2) respondent Sheriff Fajardo be found **GUILTY** of inefficiency and incompetence in the performance of official duties and simple neglect of duty and be **FINED** in the amount of Php 50,000.00 *pro hac vice*;
- 3) the Financial Management Office, Office of the Court Administrator, be **DIRECTED** to collect the fine of Php 50,000.00 from respondent Sheriff Fajardo or offset the fine against her total accrued leave credits totaling 166.71 days as of 31 December 2014 per attached Certification dated 4