

## SECOND DIVISION

[ A.M. No. P-11-2940, January 21, 2015 ]

**JUDGE GODOFREDO B. ABUL, JR., COMPLAINANT, VS. GEORGE E. VIAJAR, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 4, BUTUAN CITY, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

Before the Court is an administrative case for Dishonesty, Grave Abuse of Authority, Usurpation of Judicial Authority, and Malfeasance and Graft and Corruption filed by Judge Godofredo B. Abul, Jr. (complainant) of the Regional Trial Court, Branch 4, Butuan City, against Sheriff IV George E. Viajar (respondent).

#### The Antecedent Facts

Complainant alleged that on 26 March 2010, he issued a Writ of Execution (writ) in Civil Case No. 3985 entitled "*Felipe Gorme, Sr., Adela Gorme, Crisanta Gorme-Gado and Felipe Saludo v. Fast Cargo Transport Corporation and Romy Estrella.*" According to complainant, respondent received the writ on the same day it was issued but he withheld the writ and filed the Sheriff's Return of Service only on 21 June 2010. Complainant further alleged that respondent arrogated judicial powers upon himself by receiving P68,000 from the judgment creditor and failing to deposit it to the court. Complainant also alleged that respondent submitted an unreasonably high Sheriff's fees, through padded and imaginary charges, as can be seen from the Statement of Liquidation he submitted which contained the following charges:

- (a) Two P5,800, without receipts;
- (b) Publication of Sheriff's Notice of Sale – P15,000, published without the required raffle;
- (c) Lifting of levy – P5,000, without receipt;
- (d) Representation allowances – P4,500; and
- (e) Withheld amount from the judgment creditor – P28,260.

Complainant alleged that respondent refused to follow the Rules of Court when he failed to demand payment directly from the judgment creditor. Respondent took it upon himself to make a determination that the judgment creditor in Civil Case No. 3985, Fast Cargo Transport Corporation, is the same as Fast Cargo Logistics Corporation. In addition, respondent mailed a copy of the writ of execution to the judgment debtor in Cebu City instead of serving the writ. He then proceeded to execute a levy garnishment and conducted an illegal sale. By purposely not giving notice to the judgment debtor and its counsel, respondent deprived some of the parties of their right to participate. Respondent allegedly conducted a simulated bidding, awarded the property to the judgment creditor, received P800,000 for the

bid but did not deposit the money with the Clerk of Court. On 15 June 2010, respondent executed a Sheriff's Certificate of Redemption with accompanying acknowledgment receipt which showed that he charged the judgment debtor additional expenses of P40,000 as actual expenses and P40,000 as Sheriff's fees. Respondent then allowed the judgment debtor to withdraw the amount of P460,647 from him and only informed the trial court through an addendum of Return of Service submitted on 24 June 2010. The trial court ordered respondent to deposit the P800,000 paid by the highest bidder to the court but he refused and only gave a vague explanation.

In his comment, respondent denied that he deliberately withheld the making of the return of the writ. He alleged that on 24 May 2010, he proceeded with the auction sale since there was no sign that the judgment debtor would settle its obligation. On 25 May 2010, he delivered P575,000 out of the bid amount of P800,000 to the judgment creditor to satisfy the obligation. Respondent alleged that on 9 June 2010, Terence Saavedra (Saavedra), a representative of Fast Cargo Logistics Corporation who claimed to also represent Fast Cargo Transport Corporation, came to the trial court and informed him that he wanted to redeem the property. Respondent alleged that Saavedra returned on 15 June 2010, made a proposal to satisfy the judgment amount and the Sheriff's expenses, and he received the amount on the same day.

Respondent further alleged that the amount of P69,000 as estimated expenses was approved by complainant because he was supposed to go to Cebu City to serve the writ. However, he changed his plans because he learned that the judgment creditor still had property in Butuan City. He added that the judgment creditor opted not to deposit the estimated amount of expenses and instead personally handed it to him. Respondent further stated that it is discretionary upon complainant whether to approve his expenses. Respondent denied that he made a judicial pronouncement that Fast Cargo Transport Corporation is the same as Fast Cargo Logistics Corporation. He claimed that he observed the change in the corporate name on 15 August 1997 and that complainant was duly informed when he submitted his Sheriff's Return of Service. Respondent denied that he deliberately refused to deposit the amount of P800,000. He added that P575,000 was already delivered to the judgment creditor. He stressed that he did not receive a single centavo for his personal benefit.

In its Resolution dated 15 June 2011, this Court re-docketed the complaint as a regular administrative complaint and referred the case to the Executive Judge of the Regional Trial Court of Butuan City, Branch 3, for investigation, report and recommendation.

### **The Report and Recommendation of the Executive Judge**

After conducting his investigation, Executive Judge Francisco F. Maclang found that respondent committed the following violations:

1. Respondent did not enforce the writ by personally going to Cebu City. Instead, respondent mailed a copy of the writ to Fast Cargo Transport Corporation.
2. Respondent mailed to Fast Cargo Transport Corporation not only the writ but also the notice of levy of execution. As such, Fast Cargo Transport Corporation was not given an option to select what personal or real property would be levied by

respondent. Respondent was not able to show that Fast Cargo Transport Corporation has no bank account or other personal property that would justify the immediate levy on its real property.

3. Respondent did not immediately return the writ after the judgment had been satisfied in part or in full. Instead, he submitted the Report on 21 June 2010, or almost three months after the issuance of the writ on 26 March 2010.

4. Respondent did not present any evidence that the written Notice of Sale had been published once a week for two consecutive weeks in one newspaper. Respondent presented one Sheriff's Notice of Sale. He also presented an official receipt issued by The People's Guardian showing payment for P15,000 on 25 May 2010 but the publication was dated 28 April 2010. Respondent likewise failed to give a copy of the Notice of Sale to Fast Cargo Transport Corporation.

5. Instead of turning over the payment to the Clerk of Court for delivery to the judgment creditor, respondent took it upon himself to deliver the bid amount. He also made a conclusion that Fast Cargo Transport Corporation changed its name to Fast Cargo Logistics Corporation.

6. Respondent charged an exorbitant amount of sheriff's expenses of P68,260 even if he did not actually go to Cebu City. Even the actual expenses reflected on the Sheriff's Return, amounting to P40,000, were exorbitant. Respondent also failed to explain why he demanded P460,627 from Fast Cargo Transport Corporation after the Certificate of Sale was issued.

7. In his letter dated 1 July 2010, respondent included the amount of P176,112.60 allegedly representing lawyer's expenses from 6 November 2001 to 6 August 2007. He also admitted that he gave money to the Register of Deeds and the Assessor's Office to facilitate the release of the papers.

8. Respondent approved the Certificate of Sale instead of giving the same to the court for approval.

9. Respondent failed to show that The People's Guardian had been awarded the right to publish the Notice of Sale through a raffle conducted by the Office of the Clerk of Court.

10. Respondent failed to submit receipts for the following amounts:

- a. 5,800;
- b. P5,000;
- c. P4,500;
- d. P28,620; and
- e. P40,000.

The investigating judge noted that respondent initially admitted that he had been remiss in the performance of his duties and that he expressed willingness to accept any disciplinary action. After some time, respondent recanted and denied all the charges against him. The investigating judge recommended that respondent be imposed the corresponding sanctions by this Court.