

EN BANC

[A.M. No. P-10-2810, February 08, 2011]

MANUEL P. CALAUNAN, COMPLAINANT, VS. REYNALDO B. MADOLARTA, SHERIFE IV, REGIONAL TRIAL COURT, BRANCH 217, QUEZON CITY, RESPONDENT.

R E S O L U T I O N

CARPIO MORALES, J.:

Buenavista Properties Inc. (Buenavista) entered into a contract with La Savoie Development Corporation (La Savoie) on January 15, 1997 for the development of its (Buenavista's) property in San Rafael, Bulacan into a housing subdivision and for the sale of the constructed houses thereon.

Manuel P. Calaunan (complainant) contracted to purchase a house and lot (the property) at the Buenavista Park Subdivision owned by Buenavista. Upon complainant's payment of the reservation and downpayment, he took possession of the property.

After complainant had fully paid the purchase price of the property, the Deed of Absolute Sale had not been delivered to him, as well as the title to the property. He thus filed a complaint before the Housing and Land Use Regulatory Board (HLURB) on March 18, 2005 against La Savoie and Buenavista.

The HLURB rendered judgment^[1] in favor of complainant which was affirmed by the HLURB Board of Commissioners,^[2] and eventually by the Office of the President,^[3] the latter by Decision of May 29, 2008.

On account of a Decision of June 12, 2003^[4] rendered by Branch 217 of the Quezon City Regional Trial Court (RTC) in favor of Buenavista which filed a complaint against La Savoie for termination of contract, the trial court issued a Writ of Execution on November 21, 2007. To enforce the Writ, a contingent composed of armed men in fatigue uniforms, *barangay* officials, a few civilians, a representative from Buenavista and Reynaldo B. Madaloria (respondent), Sheriff IV of Branch 217 of the RTC, repaired to the subdivision on December 5, 2007 at about 2:00 PM to evict the homeowners.

Complainant, who was not at home at that time, arrived at about 7:30 in the evening and was escorted to the subdivision clubhouse where respondent, by complainant's claim, did not identify himself as sheriff and rudely and arrogantly told him that he could not enter his house as it had been padlocked.

Still by complainant's claim, on his query, respondent, this time identifying himself as a sheriff, informed complainant that he was enforcing the writ of execution of the

decision rendered by Branch 217 of the RTC in favor of Buenavista. Complainant thereupon advised respondent that he (complainant) was not a party to the case nor was he served a notice to vacate, hence, the writ of execution could not be enforced against him.

His protestations notwithstanding, complainant was not allowed to enter his house and was instead instructed to return on December 8, 2007 to retrieve his personal belongings.

In March 2008, complainant discovered that his house was already demolished, hence, spawned the present administrative case.

In compliance with the 1st Indorsement of June 20, 2008^[5] of the Office of the Court Administrator (OCA), respondent submitted his Counter-Affidavit on August 8, 2008,^[6] alleging that a notice to vacate was served upon the caretaker of the subdivision and its occupants after La Savoie ignored the writ of execution and failed to surrender the property. Respondent stressed that he did not cause the demolition of complainant's house. Second Vice-Executive Judge BERNELITO Fernandez (Judge Fernandez) of Branch 97, RTC of Quezon City who conducted the investigation of the complaint came up with the following findings in his Report and Recommendation dated August 12, 2009:

With the foregoing, it is clear that no Notice to Vacate was received by the complainant. The respondent should have more circumspect in insuring that all the parties and/or residents in the subject subdivision were properly notified of the implementation of the Writ of Execution as this will necessarily affect the lives and properties of the occupants therein. It appears that reasonable opportunity should have been given the complainant to seek remedial means to be able to peaceably vacate the premises and this includes properly serving the Notice to Vacate.

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Clearly, nothing appears on record that respondent was responsible or even caused the alleged demolition of the house of the complainant. A close review of the records of Buenavista Properties Inc., plaintiff vs. La Savoie Development Corporation, defendant, (Civil Case No. Q-98-33682) before the Regional Trial Court, Quezon City, Dr. 217, reveals nothing regarding the existence of any writ of demolition or demolition order. It can be safe to state that the respondent had no hand in the alleged demolition of the house of the complainant, if indeed there was any demolition at all.^[7] (underscoring supplied)

Judge Fernandez's findings were echoed by the Quezon City Executive Judge, by Report of August 28, 2009,⁸ absolving respondent from liability for the demolition of the property, but holding respondent administratively liable for his failure to serve the Notice to Vacate before evicting complainant.

The OCA, on the directive of the Court, has submitted its Report and

Recommendation of April 30, 2010, the salients of which read:

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It is clear from the foregoing provision that enforcement of a Writ of Execution that entails eviction from a contested property requires that the sheriff must first serve notice of such writ and demand of the person against whom the judgment was rendered, as well as of all other persons claiming rights under him, to vacate the subject property within three (3) days from such notice. It is only when such persons resist after service of notice and demand to vacate that the sheriff can forcibly enforce the writ by bodily removing them from the premises.

Likewise evident is the requirement that, when the situation warrants, the sheriff must give notice to two (2) sets of people before eviction can be effected. First, demand to vacate must be made on "on the person against whom the judgment for the delivery or restitution of real property is rendered"; and second, demand must likewise be made P-B. "all persons claiming rights" under the person against whom the judgment is rendered.

It is apparent that complainant Calaunan belongs to the class of persons referred to in the pertinent Rule as a person claiming rights under LA SAVOIE, the judgment obligor. On the other hand, he can also be deemed as a person asserting his own rights of ownership by virtue of the judgments rendered by the proper administrative agencies uniformly declaring him the owner of the subject property. He had already paid in full for the subject property that he had been occupying for eleven (11) years, long before the Joint Venture Agreement between LA SAVOIE and BUENA VISTA was rescinded by the trial court. The only problem was that LA SAVOIE failed to issue a final deed of sale in favor of complainant Calaunan, which became the subject of a complaint the latter filed before the HLURB. Under the given circumstances, as a person who is claiming a right to the subject property, complainant Calaunan is entitled to the protection afforded by the Rules by requiring prior notice of the Writ of Execution and/or Notice to Vacate.

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Respondent Sheriff Madolaria's unequivocal admission in his Affidavit is further bolstered by his Sheriffs Partial Return dated 20 December 2007, which states that the Notice to Vacate was served upon LA SAVOIE at San Rafael, Bulacan, through Emily Mendoza, the wife of the caretaker of the subdivision. It is also reflected therein that a copy of the Notice to Vacate was posted at the main entrance of the subdivision while other copies were distributed by the security guards posted by BUENA VISTA to the residents. It is patent, therefore, that respondent Sheriff Madolaria did not personally serve copies of the Notice to Vacate and Writ of Execution upon complainant Calaunan.

While it appears that the Notice to Vacate was received by security