

SECOND DIVISION

[**A.M. No. P-11-2888 (formerly A.M. OCA I.P.I. No. 09-3252-P), July 27, 2011**]

**GOLDEN SUN FINANCE CORPORATION, REPRESENTED BY
RACHELLE L. MARMITO, COMPLAINANT, VS. RICARDO R.
ALBANO, SHERIFF III, METROPOLITAN TRIAL COURT (METC),
BRANCH 62, MAKATI CITY, RESPONDENT.**

DECISION

BRION, J.:

Ricardo R. Albano (*respondent*), Sheriff III, Metropolitan Trial Court (*MeTC*), Branch 62, Makati City, was charged with negligence and grave misconduct by the Golden Sun Finance Corporation (*complainant*), represented by Rachele L. Marmito, the complainant's Head Auditor.

THE COMPLAINT

In a verified letter-complaint dated September 1, 2009, the complainant alleged that on January 7, 2009, it filed a complaint for the recovery of a Honda Civic Sedan with the Regional Trial Court (*RTC*), Quezon City, Branch 81, against one Lucila S. Reyes, docketed as Civil Case No. 0964026. The subject motor vehicle, registered in the name of Reyes, was encumbered in its favor, as shown in the Certificate of Registration issued by the Land Transportation Office.

The *RTC* decided in favor of the complainant and issued a writ of replevin. However, the complainant found out that the motor vehicle had already been levied upon by the respondent by virtue of a writ of execution issued on March 27, 2009 by the *MeTC*, Makati City, Branch 62, in Criminal Case Nos. 353822-23 for violation of *Batas Pambansa Bilang 22* against Reyes. It was sold at a public auction conducted by the respondent on April 29, 2009, with the Royal Makati Credit Resource as the highest bidder. On the same day, a Certificate of Sale was issued in favor of the Royal Makati Credit Resource.

The complainant averred that the levy and sale of the motor vehicle by the respondent was illegal. It claimed that the respondent was negligent when he levied upon the motor vehicle and proceeded with the auction sale without looking into the car's Certificate of Registration to determine whether it was encumbered or not. The encumbrance on the motor vehicle having been made prior to the suit filed by the Royal Makati Credit Resource, the complainant posited that its claim should have priority over the former's claims.

Required by the Office of the Court Administrator (*OCA*) to comment on the charges against him, ^[1] the respondent contended that he had no knowledge that the car was encumbered because the Certificate of Registration was never shown to him.

He also had no knowledge that the car was the subject of a writ of replevin in Civil Case No. 0964026. [2] Thus, the respondent asked for the dismissal of the complaint, stressing that he had acted within the scope of his duty as sheriff when he enforced the writ of execution.

THE OCA'S REPORT AND RECOMMENDATION

In a Memorandum Report dated November 3, 2010, [3] the OCA evaluated the complaint and submitted its findings:

The encumbrance in the instant case has been properly recorded in the Land Transportation Office and, as attested to by the complainant, in the Register of Deeds of Rizal Province. Such record is constructive notice of its contents and all interests, legal and equitable, included therein. This presumption cannot be defeated by lack of notice or knowledge of what the public record contains any more than one may be permitted to show that he was ignorant of the provisions of law. Hence, the respondent is charged with knowledge of the duly registered encumbrance on the property he levied.

In the case of *Caja vs. Nanquil*, the Court has declared that "the respondent sheriff's act of levying complainant's real property despite its being mortgaged is tantamount to negligence. As an officer of the court, he knew fully well that the property cannot be used to satisfy the judgment debt since the mortgagee is the preferred creditor in relation to the said property."

In the instant administrative complaint, the respondent not only levied the encumbered vehicle, but sold it in an execution sale, the proceeds of which would not satisfy the judgment debt because of the existing encumbrance. Thus, the implementation of the writ of execution, although impressively carried out with such celerity and promptness, had been to naught. It must be pointed out that the recovery of the vehicle itself was the subject of Civil Case No. 0964026 filed by GSFC before the Quezon City Regional Trial Court, Branch 81.

The OCA recommended that - (1) the complaint be redocketed as a regular administrative matter, (2) the respondent be held administratively liable for simple neglect of duty, and (3) the respondent be suspended without pay for one (1) month and one (1) day, with a stern warning that the commission of the same or similar offense in the future shall be dealt with more severely.

The Court, as recommended, (a) directed that the complaint be redocketed as a regular administrative matter, and (b) required the parties to manifest whether they were willing to submit the case for decision based on the pleadings/records already filed and submitted. [4]

Both the complainant and the respondent complied, manifesting that they were submitting the case for decision based on the pleadings/records on file. [5]

THE COURT'S RULING

We disagree with the OCA's recommendation. We fail to find sufficient basis to declare the respondent administratively liable for simple neglect of duty.

Section 9(b), Rule 39 of the Rules of Court states the manner by which judgments for money may be satisfied by levy:

SEC. 9. *Execution of judgments for money, how enforced.* --

x x x x

(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 obligee, **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.

In determining properties to be levied upon, the Rules require the sheriff to levy only on those "properties of the judgment debtor" which are "not otherwise exempt from execution." For purposes of the levy, a property is deemed to belong to the judgment debtor if he holds a beneficial interest in such property that he can sell or otherwise dispose of for value. [6] In a contract of mortgage, the debtor retains beneficial interest over the property notwithstanding the encumbrance, since the mortgage only serves to secure the fulfillment of the principal obligation. [7] Indeed, even if the debtor defaults, this fact does not operate to vest in the creditor the ownership of the property; [8] the creditor must still resort to foreclosure proceedings. Thus, a mortgaged property may still be levied upon by the sheriff to satisfy the judgment debtor's obligations, as what happened in the present case. After ascertaining the judgment debtor's (Reyes') interest over the car, the respondent properly enforced the levy thereon -- an act that, to our mind, is in