

## THIRD DIVISION

**[ A.M. No. P-06-2224 [Formerly OCA IPI No. 06-2367-P], April 30, 2010 ]**

**ATTY. ALBERTO II BORBON REYES, COMPLAINANT, VS. CLERK OF COURT V RICHARD C. JAMORA, DEPUTY SHERIFF IV LUCITO ALEJO, AND CLERK III EULOGIO T. MONDIDO, ALL OF THE REGIONAL TRIAL COURT, BRANCH 56, MAKATI CITY, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before this Court is a Complaint<sup>[1]</sup> dated January 16, 2006, filed by Atty. Alberto II Borbon Reyes against respondents Atty. Richard C. Jamora, Branch Clerk of Court; Lucito Alejo, Deputy Sheriff IV; Ely Mondido, Officer-in-Charge of cases, all of the Regional Trial Court of Makati City, Branch 56, for Usurpation of Authority and Grave Abuse of Authority, relative to Civil Case No. 01-887 entitled "*Kevin Ross McDonald v. Dukes and Co. Securities, Inc., et al.*"

The antecedent facts of the case, as culled from the records, are as follows:

Complainant Atty. Alberto II Borbon Reyes is the counsel of Amador Pastrana, one of the defendants in the afore-mentioned civil case. On December 9, 2004, Judge Nemesio Felix, then Presiding Judge of the Regional Trial Court of Makati City, Branch 56, rendered a judgment in the subject case in favor of the plaintiff. <sup>[2]</sup> On June 17, 2005, said Decision had become final and executory.<sup>[3]</sup> On June 29, 2005, unknown to Reyes, a Writ of Execution was issued by Jamora relative to the December 9, 2004 decision.<sup>[4]</sup>

Meanwhile, dissatisfied with the Decision, Reyes, on July 4, 2005, filed a petition for relief from judgment. On November 18, 2005, Judge Reinato Quilala, Pairing Judge of the court *a quo*, granted the petition for relief and ordered the deputy sheriff to desist from implementing the Decision dated December 9, 2004.<sup>[5]</sup> However, Reyes discovered later that the December 9, 2004 Decision had already been executed by virtue of a writ of execution.

Thus, Reyes filed the instant administrative complaint against Jamora, Alejo and Mondido. He insisted that at the time he filed the petition, no writ of execution had been issued yet in the said case. Reyes pointed out that neither the Writ of Execution nor the Sheriff's Return on the service of the writ was attached to the records of the case.

Moreover, Reyes averred that there was an over-levy because the plaintiff's claim amounted to a total of P550,000.00 (\$10,000.00) only, but Alejo allegedly levied

P7,000.000.00 worth of real properties of his client.

Finally, Reyes accused Mondido of losing the copy of the petition for relief from judgment he filed in court. Thus, Reyes claimed that Jamora, Alejo and Mondido connived together, as shown by their alleged concerted actions, to prejudice the rights of his client.

On January 31, 2006, the Office of the Court Administrator (OCA) directed respondents Jamora, Mondido and Alejo to file their respective Comments on the instant complaint.<sup>[6]</sup>

On February 22, 2006, in his Comment,<sup>[7]</sup> Mondido averred that he was in charged of purely criminal cases only in the RTC of Makati City, Branch 56. He denied that he personally received the copy of the petition for relief from judgment and claimed that it was another court personnel named Ethel who received the same as indicated in the petition. He added that at the time the petition for relief from judgment was lost, a certain Teodorico Duran was the person in charge of the civil cases. Thus, he had nothing to do with the alleged loss of the copy of the petition for relief.

For his part, Alejo, in his Comment<sup>[8]</sup> dated February 28, 2006, denied that there was collusion among him, Jamora and Mondido to prejudice the rights of the complainant. Alejo clarified that the Writ of Execution had already been issued on June 29, 2005 contrary to complainant's claim that there was no writ yet at the time he filed the Petition for Relief from Judgment on July 4, 2005. He explained that he was merely implementing the directive given to him pursuant to the writ to demand from the defendants the immediate payment, in full, of the sum of US\$10,282.15 as actual damages with interest; P200,000.00 as incidental actual expense; P300,000.00 as exemplary damages; and P200,000.00 as attorney's fees.

Alejo added that at the time he conducted the public auction on August 3 and 4, 2005 against the properties of the defendants, there was no order or injunction to stay its execution; thus, he proceeded with the execution according to his mandate.

Alejo likewise maintained that there was no over-levy over the defendant's real properties, since in addition to the US\$10,282.15 as actual damages with interest at 12% per annum, there were also incidental expenses, exemplary damages and attorney's fees to be levied. In a nutshell, Alejo averred that the defendant's obligation amounted to P1,702,663.86 while the levied property in Cavite has a market value of P662,949.49 and the Makati property was valued at P254,000.00 only. Moreover, Alejo pointed out that the subject judgment stated that the liability of the defendants is solidary.

On the other hand, in his Comment<sup>[9]</sup> dated March 6, 2006, Jamora stressed that his only involvement in the subject case was solely limited to his issuance of the Writ of Execution dated June 29, 2005 pursuant to the Order of the Court dated June 17, 2005. He controverted Reyes's claim that no writ of execution was issued yet at the time he filed the petition for relief and insisted that he personally signed the Writ of Execution, addressed to Sheriff Alejo on June 29, 2005.

Jamora likewise explained that the task of attaching to the records of the case any pleading or pertinent documents belongs to the person in charge of civil cases.