

## SECOND DIVISION

**[ A.M. No. P-05-2052 (Formerly A.M. OCA IPI No. 01-1220.PI), January 30, 2009 ]**

**MARDAVE K. TANG, COMPLAINANT, VS. SHERIFF ROMEO ASIRIT, REGIONAL TRIAL COURT, BRANCH 19 AND SHERIFF JOSE R. MARTIN, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, CAUAYAN CITY, ISABELA, RESPONDENT(S).**

### DECISION

**BRION, J.:**

On September 10, 2007, the Court (First Division) promulgated a Resolution stating that:

Considering the complaint of Mardave Tang against respondent Romeo B. Asirit for misconduct in office, abuse of discretion and ignorance of law for the alleged seizure, levy and sale at public auction of the Fuso Fighter with Plate No. UNE-212 relative to Civil Case No. 19-722, the Court resolves to dismiss the same for lack of merit.

As to the procedural lapses which happened in the course of the satisfaction of the judgment in Civil Case No. 19-722, the Court further resolves to require Sheriff's Romeo B. Asirit and Jose R. Martin to **MANIFEST** if they are willing to submit the case for decision on the basis of the records/pleadings files x x x

The memorandum dated 02 May 2007 of the Office of the Court Administrator is **NOTED**.

In a Joint Manifestation dated October 31, 2007, respondent Sheriffs Romeo B. Asirit (*Asirit*) and Jose R. Martin (*Martin*) expressed their willingness to submit the alleged procedural lapses for decision on the basis of the records and pleadings already filed. They also informed the Court that both of them will be retiring soon.

### **The Factual Background**

The allegation of procedural lapses has its roots in a decision dated November 8, 1999 in Civil Case No. 19-722, entitled "Eric Lansigan and Mariano Felipe v. Forpirio E. Padilla Jr., North Point International Corporation and Peter Baltazar," (*Civil Case*) rendered by Judge Artemio R. Alivia (*Judge Alivia*) of the Regional Trial Court (RTC), Branch 19, Cauayan City.

The dispositive portion of Judge Alivia's decision reads:

Wherefore, in view of the foregoing consideration, judgment is hereby rendered:

1. Ordering the defendant North Point and cross-defendants Pedro Baltazar and Remedios Tolentino, to pay jointly and severally, the plaintiffs the following:

(a) To Eric Lansigan, Php 95,000.00 as actual damages, x x x Php 100,000.00 as lost income; Php 20,000.00 as exemplary damages; and Php 15,000.00 as attorney's fees;

(b) To Mariano Felipe, Php 54,000.00 as actual damages x x x Php 30,000.00 as moral damages; Php 20,000.00 as exemplary damages; and Php 15,000.00 as attorney's fees.

2. Ordering the cross-defendants Pedro Baltazar and Remedios Tolentino to reimburse the defendant North Point for whatever it is ordered to pay in this action; and

3. Ordering the defendants and cross-defendants to pay the costs.

**SO ORDERED.**

A writ of execution followed on August 28, 2000 after the decision became final and executory. Clerk of Court Raymundo Meris (*Meris*) issued the writ in the absence of the Clerk of Court Branch 19. The writ, which was not addressed to a particular sheriff, was endorsed to Martin (a deputy sheriff-at-large) and not to Asirit (the regular deputy sheriff of RTC Branch 19).

Thereafter, Martin levied on two cargo trucks owned by North Point Corporation (*North Point*). The first was an Isuzu Forward and the second, a Fuso Fighter. Martin conducted an auction sale on October 16, 2000 for the Isuzu Forward. A lone bidder and one of the plaintiffs in the civil case, Eric Lansigan (*Lansigan*), won with a bid of P100,000.00. Martin awarded the Isuzu Forward to Lansigan.

On January 16, 2001, Martin conducted another public auction for the Fuso Fighter which Lansigan, also as lone bidder, won with a bid of P100,000.00. Martin awarded the Fuso Fighter to Lansigan.

After the auction sale, Lansigan filed an administrative case against Martin before the Prosecutor's Office, and Martin was relieved as the implementing sheriff of the judgment in the civil case. Meris then referred the writ to Asirit sometime in the latter part of January 2001.

On February 2, 2001, Asirit seized an Isuzu cargo truck of North Point, but released the vehicle immediately to Atty. Alfredo Derige (*Derige*), North Point's counsel, subject to the return of the vehicle to the court when so required.

On June 13, 2001, Martin submitted a Sheriff's Return of Service dated February 23, 2001 stating in the main that "the money judgment of P399,000.00 awarded to him (complainant Eric Lansigan) in the decision rendered by this Court has already been satisfied."

Consequently, North Point filed an "Ex-Parte Motion for the Issuance of an Alias Writ of Execution" in order to implement paragraph 2 of the decision "to Order the cross-defendants Pedro Baltazar and Remedios Tolentino to reimburse the defendant North Point for whatever it is ordered to pay in this action." The trial court did not issue an

alias writ.

Despite Martin's return showing full satisfaction of the judgment, Asirit used the same writ of execution (dated August 28, 2000) to levy on another motor vehicle (an Isuzu Fighter) owned by North Point. Asirit seized the vehicle from the company's driver, Nestor Legaspi, on August 8, 2001. It was loaded with cylinders of industrial oxygen and standard acetylene and industrial acetylene.

On August 10, 2001, Asirit issued a "Sheriff's Notice of Levy Auction Sale by Execution," setting the auction of the vehicle on August 20, 2001 to satisfy the plaintiff's money judgment's deficiency of P209,768.00. Lansigan again won the bid as lone bidder with a bid of P100,000.00 for the vehicle and P50,000.00 for the gas cylinder. The Certificate of Sale, issued by Asirit, noted by Executive Judge Henedino P. Eduarte, indicated that ownership over the property had been conveyed to Lansigan .

Later, using the same writ of execution, Asirit levied on a motor vehicle owned by defendant Pedro Baltazar (*Baltazar*) allegedly to satisfy the balance of the money judgment in favor of Lansigan amounting to P220,000.00. He scheduled and conducted the auction on December 28, 2001. A lone bidder, Eleanor P. Abella, of Sta. Cruz, Manila, won the auction with a bid of P223,000.00. Accordingly, Asirit awarded the mini-bus to Ms. Abella, with a certificate of sale noted by Judge Raul V. Babaran (*Judge Babaran*), the newly appointed presiding judge of RTC Branch 19. On the same day, Asirit delivered the vehicle to Abella who paid Lansigan P223,000.00.

On December 21, 2001, Baltazar moved to declare the levy and auction sale null and void and prayed for the immediate release of the mini-bus. Acting on the motion, Judge Babaran issued an order dated May 8, 2002 directing Asirit and Lansigan to deposit within ten (10) days the proceeds of the sale of Baltazar's property with the branch clerk of court. Asirit was further directed to submit an accounting of any and all moneys paid by defendants Baltazar and Remedios Tolentino (*Tolentino*) to satisfy the decision in the civil case. This is now the subject of another administrative endorsement from the OCA, referenced as Administrative Matter No. CMO-1380A.

Based on these facts and developments, we are now left with the task of resolving the procedural lapses that this Court's Resolution of September 10, 2007 defined and left for resolution.

### **The Procedural Lapses**

The OCA best summarized the issues before us when it listed the "procedural lapses which happened in the course of the satisfaction of the judgment" as follows: (1) all the proceeds of the auction sale were turned over to Lansigan to the detriment of co-plaintiff Mariano Felipe (*Felipe*); (2) Asirit immediately released the Isuzu Cargo Truck (Plate No. T-PTF-833), seized on February 2, 2001, to Derige, North Point's counsel; and, (3) Asirit made overpayments to Lansigan, as follows:

(a) Sale by Martin - P200,000.00 for the sale of two motor vehicles (with plate nos. UBA 827 and UMZ 652)