

## THIRD DIVISION

**[ A.M. NO. P-02-1612, January 31, 2006 ]**

**CONRADO E. COBARRUBIAS, COMPLAINANT, VS. ARNIEL S. APOSTOL, SHERIFF III, METROPOLITAN TRIAL COURT, BRANCH 51, CALOOCAN CITY, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Facts

Complainant Conrado E. Cobarrubias ("complainant") is the plaintiff in a suit for a sum of money with prayer for a writ of preliminary attachment entitled "Conrado E. Cobarrubias vs. Renato Caling" <sup>[1]</sup> and raffled to the Metropolitan Trial Court of Caloocan City, Branch 51 ("trial court"). <sup>[2]</sup>

Pursuant to a writ of preliminary attachment issued by the trial court on 5 September 1994, the sheriff levied on a parcel of land ("property") located in Bacoor, Cavite and owned by defendant Renato Caling ("defendant"). On 26 January 1996, the trial court rendered a decision in favor of complainant, ordering the defendant to pay actual damages and attorney's fees. <sup>[3]</sup> The court issued a writ of execution on 4 September 2000, for implementation by respondent Arniel S. Apostol, Branch Sheriff ("respondent Sheriff").

On 24 October 2000, respondent Sheriff issued a Notice of Sheriff's Sale <sup>[4]</sup> setting the auction sale of the property on 14 December 2000. The notice was published in the 26 October and 2 November 2000 issues of Pilipino Star Ngayon.

One day before the scheduled date of auction sale, Jacqueline de Lucia ("de Lucia") filed a Third-Party Claim over the property. Accordingly, respondent Sheriff required complainant to furnish an indemnity bond pursuant to Section 16, Rule 39 of the Rules of Court. On 18 December 2000, complainant filed the required indemnity bond of P120,000. Respondent Sheriff thus issued a second Notice of Sheriff's Sale <sup>[5]</sup> scheduling the auction sale on 15 March 2001. This notice was published in the 3 and 10 February 2001 issues of Pilipino Star Ngayon.

To the "surprise and disappointment" of complainant, respondent Sheriff did not conduct the auction sale on the re-scheduled date. The facts show that on 14 March 2001, de Lucia filed an Omnibus Motion to Quash Writ of Execution (with Motion to Suspend Auction Sale). Apprised of this, complainant wrote a letter to the branch clerk of court on 20 March 2001, requesting for the issuance of a certification on whether the trial court issued any order in connection with the Omnibus Motion. <sup>[6]</sup> Clerk of Court Sofia Malazarte certified on 30 March 2001 that the trial court did not issue any order except to set the motion for hearing on 6 April 2001. <sup>[7]</sup> The trial

court later issued an Order [8] dated 17 May 2001 denying the Omnibus Motion.

In his complaint filed before the Office of the Court Administrator ("OCA") on 10 May 2001, complainant bewailed the failure of respondent Sheriff to conduct the auction sale on 15 March 2001, despite the posting of an indemnity bond and the absence of an order from the trial court stopping the auction sale. He also accused respondent Sheriff of receiving sheriff's fees beyond those allowed by law:

In having the Writ of Execution implemented, complainant had already spent the following amounts:

a) For the publication (2 times) of the Notices of Sheriff's Sale - - - - -	
- - -	P10,320.00
b) Premium on the P120,000.00 indemnity bond - - - - -	
- - - -	P 4,918.50
c) <b>Sheriff's fees</b>	<b>- P 16,655.00</b>
Total	P 31,893.50 [9]

Complainant lamented that although he won in the original suit, he could not collect what was due him because of the acts of respondent Sheriff. Complainant charged respondent Sheriff of grave misconduct, willful and unjustified refusal to perform an official duty, and other acts highly unbecoming a sheriff of the court. [10]

On 30 May 2001, the OCA required respondent Sheriff to file his Comment.

In his Comment dated 26 July 2001, respondent Sheriff claimed that he "waited for the resolution of the [Omnibus] Motion to make sure that the implementation of the Writ of Execution is in accordance with law." [11] He argued that after the trial court had resolved to deny the Motion in its Order dated 17 May 2001, complainant "did not contact the undersigned for the implementation of the said writ," citing the "policy of this Court that the litigants should be the one to follow up their case and not vice versa." [12] Respondent Sheriff also denied that he received sheriff's fees of P16,655, claiming instead that —

The total amount that the herein plaintiff incurred for the Sheriff's expenses for the implementation of the writ was P2,500.00. The amount of P2,000.00 was given on September 29, 2000 while the amount of P500.00 was given sometime in February 2001. x x x

The itemized breakdown of all the expenses incurred by the herein respondent are as follows:

Transportation expenses (gasoline for 2 trips) - P 800.00  
Foods (includes lunch, snacks, mineral  
water, etc. for 2 days) - P1,200.00  
For the rent of owner type jeep - P 500.00 [13]

Complainant filed his Reply to Respondent's Comment on 29 August 2001, reiterating that the auction sale should have proceeded as scheduled because he

had posted an indemnity bond and there had been no court order preventing the sale. On the subject of sheriff's fees, complainant gave the following account:

Complainant did not give P2,000.00 to the respondent on September 29, 2000. Respondent with two (2) companions and the complainant went to the Office of the Register of Deeds of Trece Martirez City on the said date to levy the land. They went there in complainant's car with the complainant driving. He also paid for the gasoline, lunch and snack for the four (4) of them.

However, the Register of Deeds of Trece Martirez City would not annotate the levy because it was not signed by the Executive Judge of the Caloocan City Metropolitan Trial Court. Since the levy could not be annotated on the title x x x, the date of the auction sale could not be determined and the posting of the notice of sale could not likewise be made.

Complainant gave the P500.00 to the respondent on January 8, 2001, not in February 2001 as claimed by him. After the indemnity bond was approved by the Court, respondent went to the residence of the complainant and told the latter that republication of the notice of sale was no longer necessary and that he would post the notices of sale. Complainant gave another P500.00 to the respondent. [14]

### **Report and Recommendation of the OCA**

In its Report dated 25 March 2002 ("Report"), the OCA found that respondent Sheriff erred when he did not proceed with the auction sale of the property, observing that, "[r]espondent arbitrarily and oppressively disregarded his role as a ministerial officer in implementing the writ of attachment issued by the court." [15] The OCA recommended that respondent Sheriff be held liable for serious misconduct and fined P5,000. [16]

On 3 June 2002, the Court resolved to re-docket the complaint as a regular administrative matter. The Court issued another resolution dated 3 February 2003 requiring the parties to manifest within ten (10) days from notice whether they were willing to submit the case for resolution based on the pleadings filed. Neither party filed a manifestation.

### **The Court's Ruling**

The Court agrees with the finding of the OCA that respondent Sheriff is liable for failing to hold the auction sale as scheduled. Respondent Sheriff ignored specific provisions of the Rules of Court outlining the procedure for execution where the property under levy is the subject of a third-party claim. Section 16, Rule 39 of the Rules of Court states:

Sec. 16. *Proceedings where property claimed by third person.* – If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a