

EN BANC

[A.M. NO. P-03-1731, November 30, 2006]

**PNB MANAGEMENT AND DEVELOPMENT CORPORATION
REPRESENTED BY ATTY. ARNOLD NAVAL, COMPLAINANT, VS.
CARMELO CACHERO, SHERIFF IV, REGIONAL TRIAL COURT,
MANILA, BRANCH 11 AND LUISITO GALLARDO, SHERIFF IV,
REGIONAL TRIAL COURT, MANILA, BRANCH 38, RESPONDENTS.**

DECISION

PER CURIAM:

On 10 June 2002, PNB Management and Development Corporation ("PNB Madecor") filed this administrative complaint against respondents Carmelo Cachero ("Cachero"), Sheriff IV, Regional Trial Court (RTC) of Manila, Branch 11, and Luisito Gallardo ("Gallardo"), Sheriff IV, RTC of Manila, Branch 38 ("trial court"). PNB Madecor accused Cachero and Gallardo of grave misconduct relative to the execution of the trial court's decision in Civil Case No. 96-72685 entitled "*Gerardo Uy v. Pantranco North Express, Inc.*"

In that case, the trial court ordered Pantranco North Express, Inc. (PNEI) to pay Gerardo Uy ("Uy") P8,397,440.95 consisting of P4,660,558 as principal obligation, P2,057,394.76 as interest, and P1,679,488.19 in attorney's fees.^[1] PNEI, however, had an existing credit against PNB Madecor in the principal amount of P7,884,921.10. Thus, Gallardo levied on three parcels of land owned by PNB Madecor and sold them at auction on 24 May 2002.

PNB Madecor claimed that respondents were unduly partial to Uy, based on the following irregularities that allegedly occurred in connection with the execution sale:

1. The Notice of Sheriff's Sale^[2] ("notice of sale") prepared by Gallardo stated that the amount to be recovered was the entire amount of the judgment award, or P8,397,440.95. Gallardo disregarded a previous levy of P365,000 from the sale of real property owned by PNEI. Instead, Gallardo sold all three properties of PNB Madecor for P15,100,000.
2. The notice of sale listed three properties of PNB Madecor with a total zonal valuation of P146,373,750, an amount grossly disproportionate to the total judgment award.
3. Cachero, branch sheriff of RTC Branch 11, presided over the entire proceedings without an order from the presiding judge appointing him as a special sheriff, in violation of Supreme Court Administrative Order No. 12.^[3]

4. Before the actual sale, the notice of sale was not read in its entirety, particularly the portion stating the amount to be recovered and the technical description of the real properties to be sold.
5. Respondents acknowledged and accepted a bid from a certain Richard Tan ("Tan") although Tan did not give any cash payment but presented only a bank certification of his time deposit worth P20,000,000.
6. After the execution sale, Gallardo did not report to work. Two weeks after the sale, Gallardo still had not submitted a return on the proceedings nor accounted for the proceeds of the sale despite written demands from PNB Madecor.

On 26 June 2002, the Office of the Court Administrator (OCA) required respondents to comment on the charges.^[4]

In his Comment^[5] dated 12 August 2002, Cachero stated that he "merely assisted" Gallardo who was then in full control of the proceedings. Cachero stressed that several persons witnessed the execution sale, including Branch Clerk of Court Jesusa Maningas ("Atty. Maningas"); Assistant Branch Clerk of Court Jennifer dela Cruz-Buendia ("Atty. dela Cruz-Buendia"); PNB Madecor's counsel Atty. Anna Mirabel Santiago ("Atty. Santiago"); and PNEI's counsel Atty. Reynaldo Tansioco ("Atty. Tansioco"). All of them signed the Minutes of the Sheriff's Sale^[6] ("Minutes").

For his part, Gallardo alleged that:^[7]

1. During the execution sale, Cachero was in the vicinity but did not actually conduct the sale.
2. The sale of PNB Madecor's three properties for P15,100,000 did not produce excess proceeds. The proceeds only partially satisfied the debt owing Uy, based on a Statement of Account^[8] ("statement of account") provided by Uy where costs of litigation and interest caused the original judgment award to balloon to P15,124,934.13.
3. He filed a leave of absence from work immediately after the execution sale due to "deathly (sic) threats he had received from an unidentified but obviously identifiable party."
4. He accepted Tan's bid without objection from Atty. Santiago who was shown the bank certification disclosing that Tan had a premium time deposit of P20,000,000 "free from any lien and/or restriction." Such mode of payment is legally acceptable based on Section 9, Rule 39^[9] of the Rules of Court ("Rules"). Moreover, it was physically difficult for Tan to carry with him to the sale a very large amount of cash.
5. He promptly converted into cash the bid price. The Clerk of Court received the corresponding legal fees for the collection on the office day immediately following, i.e., on 27 May 2002.^[10] Uy received

the rest of the proceeds, as evidenced by an acknowledgment receipt also dated 27 May 2002.^[11]

In its Consolidated Reply^[12] dated 28 November 2002, PNB Madecor attached a letter from Atty. Maningas and Atty. dela Cruz-Buendia stating that "both [Gallardo and Cachero] were present in said auction, and were standing side by side x x x." PNB Madecor alleged that Gallardo did not present the affidavit of publication and certificate of posting prior to the conduct of the execution sale. Neither did Gallardo furnish PNB Madecor a copy of the statement of account, which presented "an exorbitant claim of almost double the value of the award in the decision."

Before the period for redemption lapsed, the Philippine National Bank (PNB) offered to redeem the properties based on the contract of pledge^[13] on PNB Madecor shares of stock between PNB, as pledgee, and Mega Prime Realty and Holdings Corporation ("Mega Prime"), as pledgor. This contract of pledge was executed to secure a loan agreement^[14] between PNB and Mega Prime. It appears that Mega Prime contracted the loan to buy all of PNB's stockholdings in PNB Madecor, including the pledged shares and the auctioned real properties.

On 20 February 2003, Gallardo executed a Certificate of Redemption^[15] ("certificate of redemption") in favor of PNB.

In its Supplemental Complaint dated 18 March 2003, PNB Madecor assailed the issuance of a certificate of redemption to PNB. PNB Madecor claimed that PNB had no personality to redeem the properties as "successor in interest under a contingent or inchoate right of Mega Prime" because the contract of pledge covered PNB Madecor shares and not the auctioned real properties. Even assuming that PNB had the right to redeem, PNB Madecor claimed that PNB's notice and offer to redeem ("offer to redeem")^[16] was fatally defective. PNB failed to attach to its offer to redeem either a certified true copy of a judgment or final order with an attachment or levy on execution annotated on the title to the properties, or a certified true copy of a deed with a memorandum reflecting a mortgage or other lien covering the properties.

Gallardo defended PNB's right to redeem the properties, stating that the value of the PNB Madecor shares pledged to PNB were backed up by the properties. Gallardo claimed that since neither PNB Madecor nor Mega Prime had given notice to redeem, title to the properties ran the risk of being consolidated in favor of Tan or another third party, which would then render PNB Madecor shares "practically worthless." Furthermore, Gallardo pointed out that Mega Prime had filed a suit with the Regional Trial Court of Malabon City ("RTC of Malabon") docketed as Civil Case No. 2793-MN seeking to annul the contract of sale it had executed with PNB. On 21 December 1999, the RTC of Malabon rendered a decision declaring the sale "void and rescinded."^[17] Gallardo asserted that PNB had an inchoate interest to the properties not only as pledgee of PNB Madecor shares, but also as their owner in the event that the contract of sale is finally declared void.

On 22 July 2003, the OCA transmitted its report to this Court, recommending that both Gallardo and Cachero be dismissed from the service for grave misconduct based on the following findings:

1. Both respondents admitted that Cachero rendered assistance during the execution sale, although Cachero had no special authority.
2. Gallardo should have submitted to the trial court for approval the addition of interests and costs of litigation to the judgment award, as reflected in Uy's statement of account. Because of the amended computation, PNB Madecor suffered great prejudice since it had to answer for a liability more than the garnished debt.
3. Respondents accepted Tan's bid although the latter presented only a certification from his bank stating the amount of his deposit. This error was not cured by the later payment of the bid price because a bank certification is not considered cash.

The OCA refused to take cognizance of the issue of whether Gallardo erred in allowing PNB to redeem the properties, considering it as "judicial in nature." On 25 August 2003, we resolved to docket the case as a regular administrative matter. Both PNB Madecor and respondents manifested their willingness to submit the case based on the pleadings and the records.

We agree with the findings and recommendations of the OCA.

Indisputably, the trial court did not issue any order appointing a special sheriff for the execution sale of PNB Madecor's real properties scheduled on 24 May 2002. In the absence of such order, only Gallardo had authority to conduct the sale. As the OCA correctly stated:

x x x x

On the alleged participation of respondent Cachero in the conduct of the execution sale, paragraph (3) of Administrative Circular No. 12, 01 October 1985^[18] provides:

The judge of the Regional Trial Court, Metropolitan Trial Court and the Metropolitan Trial Court in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the Office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another branch without first securing the consent of the presiding judge thereof.

In the instant case, while respondent Gallardo denied respondent Cachero's participation in the subject execution sale, the latter nevertheless admitted having assisted the former in the conduct of said sale. It should be stressed herein that being the sheriff of Branch 28, RTC, Manila, respondent Gallardo is tasked to conduct the subject execution sale and should not have allowed respondent Cachero or any other sheriff of RTC, Manila to participate therein.^[19]

PNB Madecor alleges that it was Cachero who "presided [over] the auction sale, accepted the bids x x x, closed the sale, declared the highest bidder and x x x personally wrote the minutes of the sale." Gallardo counters that Cachero was at the