

THIRD DIVISION

[A.M. No. P-03-1721 (Formerly A.M. No. OCA IPI No. 02-1361-P), September 30, 2004]

ENGR. HERBERT MALMIS, COMPLAINANT, VS. JEROME PAUL BUNGABONG SHERIFF IV, RTC OF BOHOL, BRANCH 47, RESPONDENT.

RESOLUTION

CORONA, J.:

The instant administrative case stemmed from the petition dated March 6, 2002 filed with the Office of the Court Administrator (OCA) by Engr. Herbert Malmis against Jerome Paul Bungabong, Sheriff IV of the Regional Trial Court (RTC) of Bohol, Branch 47, charging him with dereliction of duty relative to Civil Case No. 5170^[1] for collection of sum of money.

The facts and recommendations of the OCA follow.

Complainant alleges that on 24 February 1999, respondent sheriff levied a parcel of land under Transfer Certificate of Title (TCT) No. 33686 and sold it at public auction on 12 December 2000. Herein complainant was the highest bidder, thus, a certificate of sale was issued by the respondent declaring complainant Malmis as the purchaser. The certificate expressly mentioned that the period of redemption of the subject property expires one (1) year from the date of registration of instrument. The certificate of sale was registered in the Register of Deeds of Tagbilaran City on 8 January 2001.

According to the complainant, respondent failed and still fails to issue the Bill of Final Sale even after the expiration of the one (1) year period of redemption. He sent through his counsel two (2) letters reminding respondent of his duty. Respondent replied only after the second letter, informing the complainant that the trial court advised him not to issue anymore the Bill of Final Sale. x x x

xxx

xxx

xxx

Respondent contends that he came to know the judgment award in Civil Case No. 5170 only when he received the Writ of Execution. As mandated in the writ, the subject property was levied and sold at public auction. However, prior to the expiration of the one (1) year period of redemption, he was informed of a case involving the same property which was pending before the RTC, Branch 2, Bohol. Taking the initiative to inquire about the case, he found out that one Laurito Malinao was claiming the lot covered by TCT No. 33686, and had filed a petition to cancel the

annotation of the notice of *lis pendens* on the property. The lower court dismissed the petition and Laurito Malinao appealed to the Court of Appeals which reversed the decision of the Regional Trial Court. The Court of Appeals directed the cancellation of the original and owner's copy of TCT No. 33686 and the issuance of a new one in the name of Laurito Malinao. The appellate court further directed the annulment of the annotation of the notice of *lis pendens* appearing in the file copy of TCT No. 33686. The aforesaid decision is now final and executory.

xxx

xxx

xxx

Respondent denied having been remiss in the performance of his duties. He admits that he was at a quandary on whether to issue the certificate of final sale considering the decision of the Court of Appeals on the same subject property. For this reason, he asked advice from his presiding judge who told him, although not in writing, that he could no longer issue the requested certificate of final sale. Thus, respondent disputes the allegations of the complainant that he was negligent in the performance of his function.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court is our recommendation that respondent Sheriff Jerome Paul B. Bungabong, Regional Trial Court, Branch 47, Tagbilaran City be ADMONISHED for his negligence in the proper performance of his function relative to Civil Case No. 5170, and be advised to be more circumspect in the performance of his official functions.

While it is true that sheriffs must comply with their mandated ministerial duty to serve court writs, execute all processes and carry into effect all court orders promptly and expeditiously, it needs to be pointed out that this ministerial duty is not without limitation. In the performance of their duties, they are deemed to know what is inherently right and inherently wrong and are bound to discharge such duties with prudence, caution and attention which careful men usually exercise in the management of their affairs.^[2] As agents of the law, sheriffs are called upon to discharge their functions with due care and utmost diligence because, in serving the court's processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.^[3]

In this case, before the lapse of the one year period within which the defendant had to redeem the lot, respondent sheriff was informed of another case involving the same parcel of land. Respondent lost no time in verifying the information and found out from the RTC of Tagbilaran City, Branch 2, that one Laurito Malinao was indeed claiming ownership of the property and had filed a petition for the cancellation of the annotation of the notice of *lis pendens* initiated by complainant. Although Malinao's petition was dismissed by the RTC of Tagbilaran City, the ruling was reversed by the Court of Appeals in a decision promulgated on February 25, 1998 (and which became final and executory on June 13, 1998). The dispositive portion of the CA decision read:

WHEREFORE, premises considered, the orders of the Regional Trial Court, Branch 2, Tagbilaran City, in Civil Case No. 5595 dated December 4, 1995 and January 9, 1996 are hereby reversed and set aside. A new judgment