

EN BANC

[A.M. No. P-04-1885 (Formerly OCA-IPI-01-1184-P), September 13, 2004]

FLORENTINO A. CAJA, PETITIONER, VS. ATILANO G. NANQUIL, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 72, OLONGAPO CITY, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

Before us is a complaint for Grave Misconduct and Gross Ignorance of the Rules on Execution under the Rules of Court against Atilano G. Nanquil, Sheriff IV, Regional Trial Court, Branch 72, Olongapo City.

Complainant Florentino A. Caja was a defendant in Civil Case No. 182-0-96 entitled "Triangle Ace Corporation, Rep. by its General Manager, Mr. David J. Sagun versus Subic Realty Corporation, Florentino Caja and Erickson Y. Caja"^[1] for Sum of Money before Branch 72 of the Regional Trial Court of Olongapo City.

On November 19, 1996, Judge Eliodoro G. Ubiadas rendered a decision in Civil Case No. 182-0-96, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendants to pay the plaintiff jointly and solidarily the amount of P956,285.00 with interest at the rate of 18% per annum from April 27, 1995, plus the amount of ten (10%) percent of the amount as attorney's fees plus costs of the suit.^[2]

On February 12, 1997, a Writ of Execution,^[3] addressed to Sheriff Nanquil, was issued.

On February 27, 1997, Sheriff Nanquil sent a Notice of Garnishment to the Manager of PAG-IBIG (Take-Out Office) informing the latter not to deliver, transfer or dispose defendants' money, credits, shares, interests and deposits therein except upon orders from the court.^[4] In the Answer to Notice of Garnishment dated March 3, 1997, Daisy R. Roldan, Head, Mortgage Take-Out Center, NCR-I, stated that they will hold on to the account of one Edgar Ballesteros (P157,500.00).^[5]

On May 19, 1997, per Sheriff's Return, the Writ of Execution was returned unsatisfied.^[6] Hence, an Alias Writ of Execution was subsequently issued on May 19, 1997.^[7]

Per Notice of Levy dated May 19, 1997, Sheriff Nanquil levied a parcel of land covered by Transfer Certificate of Title No. T-46478, including its improvements,

declared in the name of Subic Realty Corporation under Tax Declaration No. 010-1356 with a total assessed value of P1,786,870.00.^[8]

On July 1, 1997, Sheriff Nanquil levied the following personal properties of defendants:

1. One Payloader, 75 B Michigan,
TCM Engine No. PD6-072064
2. One Dump Truck
Chassis No. CXZ 19J-1992977
Color – Blue^[9]

On the same date, he issued an Additional Notice of Levy for seventy-seven (77) pieces of G.I. Sheets (gauge 26 by 7 feet).^[10]

On July 8, 1997, a Notice of Third Party Claim was filed by Antero T. Dominguez, Account Officer of the Marketing Department of BAP Credit Guaranty Corporation (BCGC), before Branch 72 of Regional Trial Court of Olongapo City, informing its sheriff, that the payloader and dump truck he levied were previously mortgaged to BCGC. He requested that the levy thereon be immediately lifted and/or discharged in accordance with Section 17, Rule 39 of the Revised Rules of Court.^[11]

Third Party Claimant BCGC filed an Urgent Motion to Lift Writ of Attachment dated December 15, 1997 praying that the writ be lifted and aforesaid levied equipment be delivered to it so it can foreclose the same.^[12] On December 17, 1997, plaintiff Triangle Ace Corporation filed a Motion to Strike Out Motion to Lift Writ of Attachment.^[13]

On May 7, 1998, Judge Ubiadas denied the Urgent Motion to Lift Writ of Attachment^[14] to which Third Party Claimant BCGC filed a Motion for Reconsideration.^[15] Plaintiff moved to strike out said motion which Third Party Claimant BCGC opposed.^[16]

In an Order dated November 27, 1998, Judge Ubiadas granted plaintiff's motion to strike out the Motion for Reconsideration.^[17]

On January 18, 2000, defendants Subic Realty Corporation, Florentino Caja and Erickson Y. Caja filed a Motion to Lift Levy on Execution praying that the levy on their real property made on May 19, 1997 be lifted on the ground that the levy made on their personal properties is sufficient to satisfy the judgment. They likewise asked the lower court to direct the sheriff to conduct the appropriate execution sale.^[18]

On March 6, 2001, Judge Ubiadas denied the Motion to Lift Levy arguing that it cannot be determined at that time if the amount levied is way above the amount necessary to satisfy the judgment creditor. He further ordered Sheriff Nanquil to immediately schedule the auction sale of defendants' real and personal properties that were levied in accordance with the writ of execution.^[19]

On April 26, 2001, the Office of Acting Court Administrator Zenaida N. Elepaño received the complaint at bar dated April 10, 2001 filed by Florentino A. Caja against Sheriff Nanquil. The complaint alleged, among others things, the following:

Sometime on May 19, 1997, Sheriff Atilano Nanquil issued a Notice of Levy of the real property owned by Subic Realty Corporation (the undersigned as the President) with an assessed value of PhP1,786,870.00. Again, on July 1, 1997, the same Sheriff issued a Notice of Levy on the personal properties of the defendant Subic Realty Corporation with assessed value fixed at PhP2,900,000.00.

Under the Rules of Civil Procedure particularly in execution, the sheriff in making the levy must only levy as is sufficient to satisfy the judgment but not beyond what is stated therein. In the instant case, there was an "over levy" made by Sheriff Nanquil in utter disregard of the rules.

x x x

x x x

x x x

After the levy on the properties of the judgment debtor, the Sheriff must deliver the same to the court for execution sale. However, in the instant case, the properties levied by Sheriff Nanquil on execution were delivered directly to the judgment creditor (plaintiff Triangle Ace Corporation) without conducting the auction sale as provided in Rule 39, Section 19 of the Rules of Civil Procedure.

Moreover, Sheriff Nanquil, in violation of Section 9(b) of Rule 39 of the Rules of Civil Procedure, which states:

x x x If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties were insufficient to answer for the judgment.^[20]

On April 30, 2001, Deputy Court Administrator Jose P. Perez indorsed the complaint to Sheriff Nanquil requiring him to submit his comment thereon within ten days from receipt thereof.^[21]

On May 23, 2001, Sheriff Nanquil issued a Notice of Sheriff's Sale announcing that on June 14, 2001, at 10 a.m., in front of the Hall of Justice, West Bajac-Bajac, Olongapo City, he would be selling at public auction to the highest bidder and for cash, the following levied properties:

1. One Payloader, 75 B Michigan, TCM
Engine No. PD6-072064
2. One Dump Truck
Chassis No. CXZ 19J-1992977
3. 77 pieces of G.I. sheets
Gauge – 26 x 7 feet^[22]

On the same date, Judge Ubiadas forwarded to Deputy Court Administrator Perez the Comment of Sheriff Nanquil.^[23] It reads in part:

2) The complaint against the undersigned arose out of Civil Case No. 182-0-96 entitled "Triangle Ace Corp., represented by its General Manager, Mr. David J. Sagun vs. Subic Realty Corporation, Florentino Caja and Erickson Caja" which was raffled, heard and decided by this Court (RTC Br. 72);

3) That on May 29, 1996, a Writ of Attachment was issued in said case upon hearing of the application for its issuance and the filing of attachment bond which was approved by this Court;

4) Hence, on July 11, 1996, a Notice of Levy was made on the following which were undergoing overhauling, to wit:

a. STD 25 Payloader DA 220-15420
Serial No. 6202641; and

b. D-80 Bulldozer – Komatsu
Serial No. 19836

Attached herewith to form an integral part of this Comment is a copy of the Notice of Levy and marked as Annex "A";

5) Thereafter, the Decision was issued on November 19, 1996 and a Writ of Execution was received by the undersigned on February 17, 1997 where a Notice of Garnishment was issued to the Manager, Pag-ibig (Take out Office, Atrium Bldg., Makati Avenue, Makati City) and the Answer to the same was received on April 2, 1997 amounting only to P157,500.00 in the account of Edgar Ballesteros being held therein and marked as Annexes "B" and "C," respectively;

6) Diligent efforts have been exerted to locate other personal properties but in vain;

7) Considering that the lifetime then of the Writ of Execution was Sixty (60) Days from his receipt, undersigned made a return for the same on May 19, 1997;

8) On May 19, 1997, an Alias Writ of Execution was issued upon motion of the plaintiff;

9) That on May 19, 1997 undersigned has levied the real property of the defendant relative to the Alias Writ of Execution issued in Civil Case No. 182-0-96, a copy of which is hereto attached together with a copy of the Notice of Levy which was duly registered with the Office of the Register of Deeds of Zambales and marked as Annexes "D" and "D-1," respectively;

10) That undersigned levied the aforesaid real property instead of the personal properties for the reason that undersigned Sheriff could not find

any attachable personal properties of the defendants enough to satisfy the judgment debt despite diligent efforts exerted;

11) Thereafter, an information was relayed that the defendants still have other personal property, hence, on July 1, 1997, undersigned levied the personal properties of the defendants consisting of one Payloader, one Dump Truck and 77 G.I. sheets gauge 26 x 7 feet, a copy of the Notices of Levy are hereto attached and marked as Annexes "E" and "E-1";

12) The undersigned kept the said equipments (sic) in a vacant lot owned by the plaintiff considering that there is no available place in the Hall of Justice of Olongapo City neither in any other place in Olongapo City that would not be exposed to elements; likewise, this was with the knowledge and consent of the defendants but no complaint was made;

13) That it was only on March 6, 2001 that the Court ordered the immediate sale of the properties levied to determine [whether] the proceeds of sale is enough to satisfy the judgment; a copy of the Order is attached as Annex "F" hereof;

14) That undersigned has scheduled the auction sale of the above-mentioned equipments (sic) on June 14, 2001, a copy of the Notice of Sheriff's Sale is hereto attached and marked as Annex "G";

15) That undersigned did not include the real property in the auction sale as the same is mortgaged with a certain bank in Bulacan according to the Register of Deeds of Zambales in the amount of P10,000,000.00.^[24]

On June 14, 2001, the levied personal properties were sold at public auction with judgment creditor Triangle Ace Corporation declared as the highest bidder for P705,500.00 (P350,000.00 – payloader; P350,000.00 – dumptruck; G.I. sheets &\$150; P5,500.00). By way of a Certificate of Sale, said personal properties were transferred, ceded and conveyed to Triangle Ace Corporation. The amount of P705,500.00 was not paid to respondent sheriff since the same did not exceed the total obligation of judgment debtors.^[25]

On July 26, 2002, Court Administrator Presbitero J. Velasco, Jr. submitted a report on the investigation of the complaint where he recommended that the Initial Preliminary Investigation be dismissed for lack of merit.^[26]

On August 26, 2002, this Court required complainant Caja to file his reply to respondent sheriff's comment.^[27] The Reply was received on October 7, 2002.^[28]

On November 11, 2002, We referred the administrative matter to the Executive Judge of Olongapo City for investigation, report and recommendation.^[29]

Per manifestation of complainant Caja that respondent Nanquil is assigned to the Judge to whom the investigation of the complaint was referred to, the Court revoked the designation of said judge as investigator, and referred the case to Judge Avelino A. Lazo of Branch 75, Regional Trial Court, Olongapo City for investigation, report and recommendation.^[30]