

## SECOND DIVISION

[ A.M. No. RTJ-03-1759 (OCA I.P.I No. 00-925-RTJ), February 27, 2003 ]

**JIMMY T. GO AND ATTY. GREGORIO D. CAÑEDA JR.,  
COMPLAINANTS, VS. JUDGE ZEUS C. ABROGAR, PRESIDING  
JUDGE, RTC-BR. 150, MAKATI CITY, RESPONDENT.**

### DECISION

**BELLOSILLO, J.:**

THIS ADMINISTRATIVE CASE for *Gross Ignorance of the Law* involves the execution of the 7 October 1999 Decision of respondent Judge Zeus C. Abrogar as Presiding Judge, RTC-Br. 150, Makati City, in "*International Exchange Bank v. Alberto T. Looyuko, doing business under the name and style of Noah's Ark Sugar Refinery, Noah's Ark Sugar Holdings, Noah's Ark Merchandising, and Jimmy T. Go a.k.a. Jaime T. Gaisano*," Civil Case No. 98-791, an action for a sum of money where complainant Jimmy T. Go was adjudged solidarily liable with Alberto T. Looyuko to pay plaintiff therein the amount of P96,000,000.00 representing their total unpaid principal obligation and interest, penalty of 12% per annum on the total principal obligation plus interest, and the cost of suit.

Complainants Jimmy T. Go and Atty. Gregorio D. Cañeda Jr., his lawyer of record, question respondent judge's order dismissing their appeal from the *Decision* in the civil case. They allege that respondent Judge did not possess the authority to do so nor rule that the judgment was ripe for execution, the same being reserved in the Court of Appeals.

Complainants also challenge the sale on execution of the shares of stock purportedly co-owned by complainant Go and defendant Alberto T. Looyuko. They assert that the judgment against Go was not yet final and executory in view of the filing of a petition for certiorari, mandamus and prohibition assailing the dismissal of their appeal. In support of their claim, they cite the principle of "*judicial courtesy*" as explained in *Eternal Gardens Memorial Corp. v. Court of Appeals*,<sup>[1]</sup> and *Joy Mart Consolidated Corp. v. Court of Appeals*.<sup>[2]</sup>

Complainants further aver that respondent Judge was so incompetent a judge that he merely relied upon the "*opinion*" of Deputy Sheriff Renato Flora when the former gave the go-signal to proceed with the auction sale of Go's supposed properties, as they were in fact sold. Finally, they fault respondent Judge for not postponing the auction sale despite the pendency then of their motion to quash the writ of execution and their third-party adverse claim.

The record shows that complainant Jimmy T. Go received copy of the *Decision* in Civil Case No. 98-791 on 20 October 1999, and on 5 November 1999 moved for its reconsideration and/or for new trial. Respondent Judge denied the motion in his

Order of 17 December 1999 for lack of merit.

On 3 January 2000, alleging that the fifteen (15) - day reglementary period to perfect appeal had already expired on 4 November 1999, or a day before the filing of the motion for reconsideration and/or new trial, *International Exchange Bank* as plaintiff in the civil case moved for the execution of the judgment against Go.

On 5 January 2000 complainant Go filed his notice of appeal from the *Decision*, and at the same time opposed the motion for execution. In the meantime, Go's co-defendant Alberto T. Looyuko who appealed the *Decision* on 4 November 1999, withdrew his notice of appeal on 8 February 2000 prior to the transmittal of the original record of the civil case to the Court of Appeals and expressed conformity to the execution of the judgment against his properties.

On 8 February 2000 respondent Judge dismissed the appeal taken by Jimmy T. Go for having been taken out of time. Respondent Judge found that copy of the *Decision* was served upon Go's counsel of record on 20 October 1999 and that the period to appeal expired on 4 November 1999 a working day. This fact rendered the motion for reconsideration and/or new trial filed on 5 November 1999 already a day late.

On 14 February 2000 respondent Judge ordered the issuance of a writ of execution in favor of plaintiff bank to implement the Decision of 7 October 1999 against the "*goods and chattels of the defendants*" and in case of insufficiency thereof against "*the real property of the said defendants and to sell the same or so much thereof in the manner provided for by law for the satisfaction of said judgment.*"

As a result of the enforcement of the writ, 81,566 shares in China Banking Corporation registered in the name of Alberto T. Looyuko were levied upon. On 15 February 2000 Deputy Sheriff Renato Flora issued a notice of sale scheduling the public auction of the shares on 21 February 2000.

On 18 February 2000 complainant Go moved to quash the writ of execution on the ground that the *Decision* was not final and executory as to him and that the writ of execution was issued without the benefit of any hearing. Curiously, for an allegedly urgent motion to quash a standing writ of execution and to stop the auction of the properties he claimed to be his, complainant Go set the hearing thereof on 3 March 2000, a period of fourteen (14) days from the date of its filing.

Not content with the motion to quash, complainants also filed a third-party adverse claim under Sec. 16, Rule 39, *1997 Rules of Civil Procedure*<sup>[3]</sup> over one-half (½) of the 81,566 shares of stock that had been calendared for public sale. On 21 February 1999 the sale on execution took place as scheduled with plaintiff bank buying the shares of stock for P64,000,000.00.

Atty. Gregorio D. Cañeda Jr., as new counsel of record of complainant Go, did not attend the 3 March 2000 hearing of his client's motion to quash. In the interest of justice, respondent Judge reset the hearing to 8 March 2000, although this setting was again aborted by complainants on 7 March 2000 when they filed a *Manifestation* requesting the cancellation of the hearing. Complainants argued that their motion had become moot with the sale of the 81,566 shares of stock.

Meanwhile, while their third-party adverse claim and motion to quash the writ of execution were pending, complainants filed a complaint for the annulment of the auction sale with damages and injunction with RTC-Br. 154, Pasig City, docketed as Civil Case No. 67806, entitled "*Jimmy T. Go v. The Office of the Clerk of Court and Ex-Officio Sheriff of Makati, Sheriff IV Renato C. Flora and/or any of his representatives.*" This action was allegedly based on Sec. 16, Rule 39, 1997 Rules of Civil Procedure.<sup>[4]</sup>

On 4 March 2000 complainants also filed a *Petition for Certiorari, Mandamus and Prohibition* with the Court of Appeals, docketed as CA-G.R. SP No. 57572. As in their pending complaint for annulment, they assailed the writ of execution issued by respondent Judge in favor of plaintiff *International Exchange Bank* as well as the former's prior orders denying Go's motion for reconsideration and/or new trial; dismissing his notice of appeal; and authorizing the issuance of a writ of execution.

On 19 April 2000 respondent Judge issued a second writ of execution directing Deputy Sheriff Renato Flora to levy on the properties of complainant Jimmy Go and to sell the properties to satisfy the *Decision* in Civil Case No. 98-791 in full.

On 15 May 2000 the Court of Appeals promulgated its *Decision* in CA-G.R. SP No. 57572 denying Go's petition for lack of merit and affirming *in toto* the orders of respondent Judge, most notably the declaration of respondent's *Decision* in the civil case as final and executory, and the validity of the writ of execution.<sup>[5]</sup> The motion for reconsideration of this *Decision* is said to be still pending in the appellate court.

In his *Comment* on the instant complaint, Judge Zeus C. Abrogar asserts that the 14 February 2000 writ of execution in Civil Case No. 98-791 was directed only against defendant Alberto T. Looyuko who had withdrawn his notice of appeal and conveyed his acquiescence to the execution of the *Decision* against his properties. Judge Abrogar claims that the reference of the writ to "*defendants*" was a mere clerical mistake, as it should have read "*defendant,*" that was not corrected when the writ was issued.

Respondent Judge also alleges that, as he honestly intended it to be, the writ of execution was enforced to cover only the 81,566 shares registered in the name of Albèrto T. Looyuko, not upon any property of complainant Go. Finally, to absolve himself of the charge, Judge Abrogar refers to the *Decision* of the Court of Appeals in CA-G.R. SP No. 57572 which affirmed *in toto* the orders being assailed in the instant complaint.

We are not impressed by complainants' allegations.

Firstly, prior to the transmittal of the original record of Civil Case No. 98-791 to the appellate court, Judge Abrogar possessed the authority under Sec. 13, Rule 41, 1997 Rules of Civil Procedure to dismiss an appeal for having been taken out of time. In the instant case, there is no question that respondent Judge dismissed the appeal on 8 February 2000 within the period reserved to him by our rules of procedure.

Secondly, as far as Judge Abrogar is concerned, the *Decision* in Civil Case No. 98-791 was already final and executory when he authorized the execution of the