

## FIRST DIVISION

[ A.M. No. P-02-1580, April 09, 2003 ]

**RENE ESPINA AND CEBU DISCOVERY BAY PROPERTIES, INC.,  
COMPLAINANTS, VS. JUAN A. GATO, RESPONDENT.**

### R E S O L U T I O N

**AZCUNA, J.:**

Before us is a complaint filed by Rene Espina and Cebu Discovery Properties, Inc. (CDPI) against Juan A. Gato, Sheriff IV of the Regional Trial Court, Lapulapu City, for acting with manifest bias and partiality in Civil Case No. 2309-L, entitled "*Concordio Bancale, et al. v. Eva Paras*" while it was still pending before the Regional Trial Court, Branch 57, of Lapulapu City.

Concordio Bancale, Jr., Cesario Bancale, Felipa Bancale, Patrocinio Bancale, Felicisima Bancale, Marcos Bancale, Cornelio Bancale, Demetrio Bancale, Teofila Bancale, Ignacio Bancale, Enriqueta Jumao-as-Bancale, Pinky Bancale, Darwin Bancale, Marie Alene Bancale, Maria Ethel Bancale, Juanita Bancale-Igoy, Marta Bancale-Nuñez, Fortunata Bancale-Gemeno, Isidra Bancale, Gavino Bancale, Marcelino Bahio, Praxedes Bahio, Heraclio Bahio, Jr., Gloria Malinao, Leonarda Canada and Regina Bancale-Igoy are owners of a parcel of land in Punta Engaño, Lapulapu City, covered by Transfer Certificates of Title Nos. 36425 and 36426. They are also the plaintiffs in the civil case entitled, "*Concordio Bancale, et al. v. Eva Paras*."

Except for plaintiff therein Regina Bancale-Igoy, the abovementioned persons sold their undivided interest over the subject property to complainant CDPI. The parties executed an Agreement to Sell and to Buy dated January 31, 1997, and a Deed of Absolute Sale dated August 29, 1997.

Three days prior to plaintiffs' signing of the Deed of Absolute Sale or on August 26, 1997, Attys. Generoso A. Juaban and Francis M. Zosa, plaintiffs' counsel, filed a motion to set attorneys' fees at P9 million. On the very same day, the trial court granted the motion. However, on September 2, 1997, plaintiffs filed a motion for reconsideration of the said order. They alleged therein that although Attys. Juaban and Zosa were their lawyers in the abovementioned civil case, they did not conform to the said motion. Moreover, they alleged that the counsel falsely made it appear that plaintiff Regina Bancale-Igoy spoke for all of them when she conformed to the motion. She allegedly did not have the authority of the other plaintiffs to conform to their counsel's motion to set the attorneys' fees at P9 million.

Plaintiffs' motion for reconsideration was, however, denied by the trial court on the ground that said order had already become final and executory. Hence, pursuant to the said order, the trial court issued a writ of execution addressed to respondent sheriff dated October 14, 1997, which states as follows:

WHEREAS, on August 26, 1997, this Court issued an order which reads as follows:

"As prayed for by Retired Judge Generoso A. Juaban and Atty. Francis M. Zosa, their attorney's fees is hereby fixed at P9 million pesos, to be taken from the money due from the buyer to the sellers under the agreement to buy and sell.

Furnish copies of this Order to Judge Generoso Juaban and Francis M. Zosa, accordingly.

SO ORDERED."

WHEREAS, on October 10, 1997, this court issued an Order which read as follows:

"Considering that the Order of this Court dated August 26, 1997 has already become final and executory, not having been appealed, the motion for execution is hereby GRANTED.

Let a Writ of Execution issue to satisfy the Order dated August 26, 1997 to enforce the same fixing the attorney's fees.

Sheriff Juan A. Gato of this Branch is hereby directed to implement the Writ.

SO ORDERED."

WHEREFORE, we command you to collect the attorney's fees fixed by the court at P9 million pesos from the plaintiffs in this case, which is due from the buyer to the sellers under the agreement to buy and sell, plus the legal fees for the service of this writ, after payment of the sheriff's fees to the official Cashier of the Sheriff's Office. Thereafter, you shall render your report of the action you shall have taken on this writ within the period fixed by the rules.<sup>[1]</sup>

On October 23, 1997, respondent sheriff, to satisfy the abovementioned writ of execution, levied upon the rights, shares, interests and participation of the plaintiffs over the property under TCT Nos. 36425 and 36426. This he did, despite the fact that the writ of execution issued by the trial court specifically directed that the attorney's fees were "to be taken from the money due from the buyer to the sellers under the agreement to buy and sell." Respondent issued a notice of sale on execution dated October 24, 1997, which stated that the property would be sold at a public auction on November 28, 1997 at 2 o'clock in the afternoon.

A third party claim with the office of respondent sheriff was filed by complainant Rene Espina for himself and on behalf of CDPI on November 18, 1997. On November 28, 1997, the subject properties were sold at public auction to Attys. Juaban and Zosa for P9 million. A certificate of sale was issued in favor of Attys. Juaban and Zosa and the same was registered with the Registry of Deeds on December 3, 1997, in accordance with Section 25, Rule 39 of the Rules of Court.

However, before the lapse of the one-year period of redemption under Section 33 of