

FIRST DIVISION

[A.M. No. MTJ-01-1379, September 10, 2002]

**RAMIL LUMBRE, COMPLAINANT, VS. JUSTINIANO C. DELA CRUZ,
SHERIFF, METROPOLITAN TRIAL COURT, BRANCH 38, QUEZON
CITY, RESPONDENT.**

D E C I S I O N

VITUG, J.:

In a sworn letter-complaint, dated 27 May 2000, complainant Ramil Lumbre has charged respondent sheriff Justiniano C. de la Cruz with dereliction of duty for his failure to implement a writ of execution. The matter relates to Civil Case No. 13818, entitled "Spouses Ramil Lumbre and Leticia Lumbre vs. Spouses Cesario Baluyot and Cynthia Baluyot," for rescission of contract and recovery of a sum of money and damages before the Metropolitan Trial Court, Branch 33, of Quezon City.

Complainant, the plaintiff in the civil case, averred that on 23 January 1998, then Presiding Judge Ricardo Buenviaje rendered a decision in favor of the spouses Lumbre. When the defendants had failed to appeal therefrom, complainant, through counsel, filed a motion for execution of the judgment. On 7 August 1998, Judge Buenviaje issued an order granting the writ of execution but it was only on 23 March 1999, or more than seven months later, when respondent sheriff issued a notice of levy and sale on execution of personal property, scheduling the auction sale on 7 April 1999. The auction sale did not proceed on its scheduled date on account of a motion of third party claimant Bonifacio Magno. The motion, filed on 06 April 1999 before pairing Judge Augustus Diaz of MeTC, Branch 38, Quezon City, sought the issuance of an order lifting the notice of levy. On 6 September 1999, Judge Diaz ordered the suspension of the auction sale until the plaintiff would have filed an indemnity bond. The plaintiff complied by posting the bond. On 24 September 1999, respondent sheriff gave notice resetting the auction sale to 01 October 1999; however, in an order, dated 30 September 1999, Judge Diaz suspended the auction sale. Complainant's counsel filed a motion for reconsideration. On 19 October 1999, Judge Diaz lifted the notice of levy, stating that the subject property was not owned by the defendants, the spouses Baluyot, but by third party claimant Bonifacio Magno. In the same order, Judge Diaz inhibited himself from resolving complainant's motion for reconsideration of the 30th September 1999 order. The case was later assigned to Judge Henri Inting of Branch 53, MeTC, Quezon City, who ultimately denied complainant's motion for reconsideration.

Citing the various incidents that had transpired from the time the decision was rendered on 23 January 1998 until the issuance of the order on 19 October 1999, respondent sheriff, in his comment, maintained that the writ of execution had been properly served and attributed its non-implementation to the motion filed by the third party claimant.