

## SECOND DIVISION

**[ A.M. NO. P-05-1934 (FORMERLY OCA I.P.I. NO. 03-1693-P), April 11, 2005 ]**

**JOSE AND MILAGROS VILLACERAN, COMPLAINANTS, VS.  
WILMER M. BELTEJAR, SHERIFF III, MUNICIPAL TRIAL COURT  
IN CITIES, SANTIAGO CITY, BRANCH 2, RESPONDENT.**

### DECISION

**PUNO, J.:**

This is an administrative case for Dishonesty, Oppression, and Falsification filed by spouses Jose and Milagros Villaceran against Wilmer M. Beltejar, Sheriff III, Municipal Trial Court in Cities (MTCC) of Santiago City, Branch 2.

Complainants alleged<sup>[1]</sup> that they were the accused in Criminal Case Nos. II-4781 and II-4782 for violations of Batas Pambansa Blg. 22 of the MTCC of Santiago City, Branch 2. They were acquitted of the charges but were ordered to pay damages for which their two lots in Marilao, Bulacan, covered by Transfer Certificates of Title Nos. T-184120 (M) and T-184126 (M), were levied upon.<sup>[2]</sup> Respondent sheriff scheduled the public auction sale of the properties at two o'clock in the afternoon of May 8, 2003 at the Office of the Clerk of Court, MTCC-Santiago City, Branch 2, but later transferred the venue to the *Barangay* Hall of Lambakin, Lambakin, Marilao, Bulacan, for the same date. During both times, complainants received notices of the sale from respondent sheriff. Thus, at the scheduled time and place, complainant Jose Villaceran together with a friend and interested bidder, Darwin Pascua, went to Marilao, Bulacan to participate in the auction sale. However, no sale was conducted because respondent sheriff failed to appear. This was attested to by the *Barangay* Captain of Lambakin, Marilao, Bulacan in his Certification dated June 5, 2003.<sup>[3]</sup> Notwithstanding the fact that no auction sale was actually conducted, respondent nevertheless issued in May 2003 a sheriff's certificate of sale making it appear that a public auction sale was conducted on May 8, 2003, and that the highest bidder was Jaime E. Co, the private complainant in Crim. Case Nos. II-4781 and II-4782. Complainants thus charge herein respondent with oppression, dishonesty, and falsification punishable under Article 171, paragraphs 2 and 4 of the Revised Penal Code.<sup>[4]</sup>

Respondent denied the charges. He alleged that a public auction sale was actually conducted on May 8, 2003 but that it was held at the Office of the Clerk of Court, MTCC-Santiago City, Branch 2, not at Marilao, Bulacan. Although the sale was first scheduled at the MTCC-Santiago City, he transferred it to the *Barangay* Hall of Lambakin, Lambakin, Marilao, Bulacan, and then back again to the MTCC-Santiago City, both instances upon the request of Jaime E. Co. Respondent advised complainants about the latest change of venue in a letter dated May 7, 2003<sup>[5]</sup> which he delivered to complainants' counsel of record, Atty. Edmar C. Cabucana. At

the same time, he notified the *Barangay* Captain of Lambakin, Marilao, Bulacan about the change of venue through two long distance telephone calls, as evidenced by a record of his calls to Bulacan on May 7, 2003 issued by Digital Telecom Philippines, Inc.<sup>[6]</sup>

Considering the conflicting factual versions presented by the parties, we referred this matter<sup>[7]</sup> to the Executive Judge of the Regional Trial Court of Echague, Isabela, for investigation, report and recommendation within sixty (60) days from receipt of the record, in our Resolution dated January 12, 2004.

After conducting investigative hearings, the Investigator<sup>[8]</sup> submitted his report and recommendation<sup>[9]</sup> containing the following findings, viz.: that a public auction sale of complainants' properties was actually conducted on May 8, 2003 at the Office of the Clerk of Court, MTCC-Santiago City, Branch 2, not at Marilao, Bulacan; that complainants were not informed of the change of venue; and, that the lone bidder in the sale was indeed Jaime E. Co. The Investigator recommended that the charges of dishonesty, oppression, and falsification be dismissed for lack of merit. Instead, respondent should be held liable for simple misconduct for his failure to give three (3) days' notice in advance of the sale to complainants as required by Section 15, Rule 39 of the **Rules of Court** for which he should be reprimanded and fined two thousand (P2,000.00) pesos.

The Office of the Court Administrator (OCA) agrees that respondent should be held liable for simple misconduct only, but that he should be suspended for one (1) month instead.

We agree that the charges of dishonesty, oppression and falsification against respondent sheriff be dismissed for lack of merit. However, he committed procedural shortcuts in the conduct of the execution sale of complainants' properties for which he deserves sanction.

Paragraphs (c) and (d), Section 15, Rule 39 of the **Rules of Court** provide, viz.:

Before the sale of property on execution, notice thereof must be given as follows:

x x x

x x x  
x x x

(c) In case of real property, by posting for twenty (20) days in the three (3) public places above-mentioned, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (P50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city.

(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale x x x x

The notice shall specify the place, date and exact time of the sale which should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon. The place of the sale may be agreed upon by the parties. In the absence of such agreement, the sale of real property x x x shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court. x x x x

Under the foregoing, the following requirements must first be complied with before an execution sale of real property can be conducted, to wit: (1) posting of the notice of sale for twenty days in three public places, preferably in conspicuous places in the municipal or city hall, post office and public market of the municipality or city where the sale is to take place; (2) written notice of the sale to the judgment obligor at least three days before the date of the sale; and, (3) publication of the notice of sale once a week for two consecutive weeks in one newspaper selected by raffle if the assessed value of the property exceeds fifty thousand pesos.

In the case at bar, the Investigator found that respondent substantially complied with the requirement of posting when he posted notices of the sale at the Office of the Mayor, the Municipal Trial Court and at *Barangay* Lambakin, Marilao, all in Bulacan, on April 3, 2003 regarding the sale to be conducted on May 8, 2003 at the Office of the Clerk of Court-MTCC, Santiago City. However, we do not agree that there was substantial compliance with par. (c), Sec. 15, Rule 39 of the Rules of Court. Under this provision, the notice of sale required to be posted in three public places must particularly describe the property to be sold and **the place where it is to be sold**. Although the required twenty days' posting had been complied with with the notice posted on April 3 regarding the sale to be conducted in Santiago City, a confusion was created when respondent transferred the venue of the sale to Marilao, Bulacan. The end result was that prospective bidders to the property like herein complainant Jose Villaceran and his friend Darwin Pascua, were misled into thinking that the sale would be at Bulacan. There was no evidence to show that a notice of sale, transferring back the venue to the Office of the Clerk of Court-MTCC, Santiago City, had been posted for twenty (20) days. The evidence<sup>[10]</sup> suggests otherwise considering that respondent received the request of Jaime E. Co for the transfer back of venue to Santiago City only on May 5, 2003. With respect to extrajudicial foreclosure sales of real property, we have ruled that the statutory requirements of posting and publication must be strictly complied with since non-compliance could constitute a jurisdictional defect that would invalidate the sale.<sup>[11]</sup> No reason exists not to apply the same principle in the execution sales of real property under Rule 39 of the Rules of Court. In fact, under Sec. 17 of said Rule, an officer selling a property on execution without the notice required in Sec. 15 is liable to pay punitive damages to any person injured thereby as well as actual damages to be recovered in the same action. Considering all the foregoing, we conclude that there was no compliance with the required twenty days' posting in the case at bar.

**Second**, there was likewise non-compliance with the requirement of three days' notice in advance to the judgment obligor. Although complainants were notified that the auction sale would be held at the Office of the Clerk of Court-MTCC, Santiago City, and then transferred to Marilao, Bulacan, they were not similarly notified of the transfer back of venue to Santiago City. Respondent's contention that he complied