

SECOND DIVISION

[**A.M. No. P-10-2835 (Formerly A.M. OCA IPI No. 08-2901-P), June 08, 2011**]

**DEVELOPMENT BANK OF THE PHILIPPINES, REPRESENTED BY
ATTY. BENILDA A. TEJADA, CHIEF LEGAL COUNSEL,
COMPLAINANT, VS. CLERK OF COURT VII ATTY. JOEY S.
JOAQUINO, OFFICE OF THE CLERK OF COURT, AND SHERIFF IV
CONSTANCIO V. ALIMURUNG, BRANCH 18, BOTH OF THE
REGIONAL TRIAL COURT, CEBU CITY, RESPONDENTS.**

RESOLUTION

Before the Court is an earnest plea^[1] of respondent Jeoffrey S. Joaquino (Joaquino), Clerk of Court of the Regional Trial Court (RTC), Branch 18, Cebu City, seeking reconsideration of the Resolutions^[2] of the Court dated August 11, 2010 and February 7, 2011.

Development Bank of the Philippines (DBP) filed a verified letter-complaint before the Office of the Court Administrator, charging Clerk of Court Joaquino with grave misconduct, abuse of authority, and gross ignorance of the law; and Sheriff IV Constancio V. Alimurung (Alimurung) with grave misconduct and conduct prejudicial to the best interest of the service relative to Civil Case No. CEB-29383, entitled "*Spouses Florentino J. Palacio and Ellen Palacio, Palacio Shipping, Inc., and FJP Lines, Inc. v. Development Bank of the Philippines,*" for damages, judicial determination of amount of obligation, nullity/annulment/reformation of instruments and agreements, bloated principal obligation, excessive interest rates and penalties, judicial accounting and application of payment, specific performance, extinguishment of obligations, and attorney's fees. A brief background of Civil Case No. CEB-29383 is quoted herein, viz.:

The Development Bank of the Philippines (DBP) is the defendant in Civil Case No. CEB-29383, filed with the Regional Trial Court, Branch 21, Cebu City, presided by Judge Eric F. Menchavez. The civil action (*Annex A, Complaint*) was filed, on 15 September 2003, by the FJP Lines and the spouses Palacio against DBP for Damages, Judicial Determination of Amount of Obligation, Specific Performance, etc. DBP, through Atty. Tejada, its Chief Legal Counsel, filed its Answer (*Annex B, Ibid*) with Specific Affirmative Defenses and interposed Compulsory Counterclaim.

The plaintiff moved for Partial Summary Judgment on the issue of insurance proceeds, but defendant opposed the same. On 6 September 2006, the trial court rendered a Partial Summary Judgment (*Annex C, Ibid*); in favor of the plaintiff by directing defendant DBP to immediately release to FJP Lines the GSIS insurance proceeds due to M/V Don Martin Sr. 9. DBP asked for reconsideration but the same was denied in an Order (*Annex D, Ibid*), dated 8 December 2006. Not persuaded, DBP filed a Notice of Appeal (*Annex E, Ibid*).

On 19 December 2006, the plaintiff moved for execution pending appeal of the partial judgment. This was granted by the trial court in the Order of 29 January 2007 (*Annex F, Ibid*). A motion for reconsideration was filed by DBP but the same was denied in the Order of 12 March 2007.

Respondent Joaquino issued, on 21 March 2007, a Writ of Execution (*Annex G, Ibid*) to enforce the partial judgment. To avoid execution, DBP filed an Urgent Motion to Stay Discretionary Execution with Alternative Motion for the Approval of Supersedeas Bond. The trial court denied the motion in an Order, dated 26 March 2007. Aggrieved, DBP filed a Petition for Certiorari (docketed as CA-G.R. SP No. 02604) before the Court of Appeals, Cebu City Station, to assail the Orders, dated 29 January and 12 March 2007.

In the meantime, Sheriff IV Romeo C. Asombrado of the Regional Trial Court, Branch 21, Cebu City, in compliance with the Writ of Execution, dated 21 March 2007, demanded, on 23 March 2007, from DBP the immediate and full satisfaction of the partial judgment and served the corresponding Notice of Garnishment (*Annex H, Ibid*).

In a Decision (*Annex I, Ibid*), dated 20 July 2007, in CA-G.R. SP No. 02604, the Court of Appeals annulled and set aside the Orders, dated 29 January and 12 March 2007, as well as the writs and processes subsequently issued for the implementation of the said Orders. FJP Lines seasonably filed a motion of reconsideration, but the same was denied.

On 13 November 2007, FJP Lines moved to dismiss DBP's appeal, which motion was granted in an Order, dated 6 March 2008 (*Annex J, Ibid*). Unconvinced, DBP sought the reconsideration (*Annex K, Ibid*) of the said Order.

On 17 March 2008, respondent Joaquino issued another Writ of Execution to implement the Partial Judgment of 6 September 2006. The same was served to defendant DBP by respondent Alimurung (*Annex L, Ibid*).

In an Order (*Annex N, Ibid*), dated 4 April 2008, Judge Menchavez inhibited himself from handling Civil Case No. CEB-29383 and ordered that the pending incident, relative to the issuance and implementation of the writ of execution, be addressed to the court where the case will be re-raffled. On the same day, pursuant to the 17 March 2008 Writ of Execution, respondent Alimurung served a copy of the Notice of Sheriff's Sale at Public Auction (*Annex O, Ibid*) to DBP's Regional Marketing Center in Central Visayas, informing it that its proprietary shares in Cebu Country Club would be sold at public auction on 8 April 2008. In a Letter (*Annex P, Ibid*), dated 8 April 2008, DBP manifested to respondent Alimurung its objection to the auction sale, considering that the partial judgment, dated 6 September 2006, sought to be implemented, was not yet final and executory. However, despite such notice, Sheriff Alimurung proceeded with the scheduled auction sale (*Annex Q, Ibid*).

DBP filed a Supplemental Motion for Reconsideration of the Order, dated 6 March 2008 (which denied its Notice of Appeal) with an Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction to enjoin respondent Alimurung from proceeding with the enforcement of

the Writ of Execution, dated 17 March 2008. During the hearing on the TRO, respondent Alimurung "boldly manifested in open court that he [was] bent on further implementing the Writ of Execution dated March 17, 2008 against DBP."

On 16 April 2008, respondent Alimurung again issued a Notice of Sheriff's Sale at Public Auction over several parcels of land belonging [to] DBP.

To prevent further damage, DBP, on 18 April 2008, filed before the Court of Appeals, Cebu City Station, a Petition for Injunction with Prayer for TRO/Injunction against Spouses Palacio, LJP Lines, and respondent Joaquino and Alimurung (docketed as CA-G.R. SP No. 03411).^[3]

On August 11, 2010, the Court issued a Resolution^[4], the *fallo* of which reads:

The Court **RESOLVES** to **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendation of the Office of the Court Administrator in the attached Report dated 27 January 2010 (Annex "A"). Accordingly, the Court further resolves to:

1. **RE-DOCKET** the instant administrative complaint as a regular administrative matter;
2. **FIND** respondent Jeffrey S. Joaquino, Clerk of Court VII, OCC, RTC, Cebu City, **GUILTY** of gross ignorance of the Rules and dereliction of duty and accordingly impose on him the penalty of **SUSPENSION** for six (6) months without pay, with **WARNING** that a repetition of the same or similar offense in the future shall merit his dismissal from the service; and
3. **DISMISS** the complaint against respondent Constancio V. Alimurung, Sheriff IV, RTC, Br. 18, Cebu City, for lack of merit.

SO ORDERED.^[5]

Respondent Joaquino filed a motion for reconsideration; while DBP filed a partial motion for reconsideration, assailing the dismissal of the complaint against Sheriff Alimurung. On February 7, 2011, the Court issued a Resolution^[6] denying both motions with finality for lack of substantial merit.

On April 13, 2011, respondent Joaquino filed a second motion for reconsideration, raising the following grounds in support of his motion: (1) that he issued the questioned March 17, 2008 writ of execution based on his honest reliance on and obedience to the September 6, 2006 Order of the RTC, granting the partial summary judgment, and the March 6, 2008 Order of the RTC, declaring the partial summary judgment final and executory, and directing the issuance of a writ of execution; (2) that the penalty of six (6) months without pay is too harsh and severe for the violation charged against him, based on the penalty imposed in *Separa v. Atty. Maceda*.^[7]

Out of compassion, we take a second look at the penalty imposed on Clerk of Court Joaquino. A review of the penalty imposed on court employees who were administrably charged is justified, *viz.*: