

EN BANC

[A.M. No. P-13-3113, August 02, 2016]

**ROSEMARIE GERDTMAN, REPRESENTED BY HER SISTER AND
ATTORNEY-IN-FACT, ROSALINE LOPEZ BUNQUIN,
COMPLAINANT, VS. RICARDO V. MONTEMAYOR, JR., SHERIFF IV,
OFFICE OF THE PROVINCIAL SHERIFF, CALAPAN CITY,
PROVINCE OF ORIENTAL MINDORO, RESPONDENT.**

DECISION

PER CURIAM:

We have ruled time and again that sheriffs are keepers of the public faith. Inevitably in close contact with litigants, sheriffs should maintain obedience to the law and the rules and observe circumspection in their behavior. Any conduct short of these shall not be tolerated and we will not hesitate to impose the supreme penalty of dismissal to purge the Judiciary from undeserving individuals.

The Case

For our consideration is the Complaint-Affidavit^[1] filed by Rosemarie Gerdman (Complainant) charging Ricardo V. Montemayor, Jr. (Sheriff Montemayor), Sheriff IV at the Office of the Provincial Sheriff of Calapan City, Oriental Mindoro with (1) gross misconduct, (2) dishonesty and (3) conduct prejudicial to the interest of the service.

The Office of the Court Administrator (OCA) recommended that Sheriff Montemayor be found guilty of grave misconduct and dishonesty and be dismissed from service.

The Facts

Complainant was one of the defendants in Civil Case No. 299,^[2] an action for unlawful detainer, filed by a certain Emilio Mingay (Mingay) before the First Municipal Circuit Trial Court of Baco-San Teodoro-Puerto Galera (MCTC). Mingay is the registered owner of a parcel of land located at Barangay Sabang, Puerto Galera, Oriental Mindoro, a portion of which was leased by the defendants.^[3] In a Decision^[4] dated January 5, 2000, the MCTC ruled in favor of Mingay, to wit:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered for the plaintiff and against the defendants ordering them and all persons claiming rights under them to vacate and surrender possession of the subject premises to the plaintiff, as well as, to pay the following:

1. For Defendant Rosemarie Lopez Gerdman, to pay Plaintiff the amount of SEVEN HUNDRED SIXTY THOUSAND FIVE HUNDRED FORTY-SEVEN PESOS (P760,547.00) in satisfaction of the accrued rentals with escalation rate of TEN PERCENTUM

(10%) per annum from January 06, 1988 up to and including December 31, 1999 and thereafter to pay the sum of EIGHT THOUSAND FIVE HUNDRED FIFTY-SEVEN PESOS (P8,557.00) as monthly rental beyond December 31, 1999 until she vacates the premises in question;

2. For Defendants Antero Lopez, Rosemarie Lopez Gerdman and Rosalyn Lopez Bunquin, to pay jointly and severally Plaintiff the sum of SEVEN THOUSAND TWO HUNDRED PESOS (P7,200.00) as rentals for nine (9) months during the period covering the implied new lease;

3. For all the Defendants, to pay jointly and severally the Plaintiff the amount of TWENTY THOUSAND (P20,000.00) as attorney's fees; and[]

4. Costs of suit. []

SO ORDERED.^[5]

On January 18, 2000, Mingay filed a Motion for Immediate Execution of Judgment.^[6] The MCTC issued a Writ of Execution^[7] on January 27, 2000 (2000 Writ). Defendants did not appeal the MCTC Decision but filed Civil Case No. R-4846 instead, a petition for annulment of judgment of the MCTC Decision in Civil Case No. 299. It was filed before Branch 40 of the Regional Trial Court (RTC) of Calapan City.^[8] This halted the enforcement of the 2000 Writ, with the RTC restraining its enforcement for 20 days.^[9] Eventually, in the Return^[10] he filed, Sheriff Jaime V. Abas (Sheriff Abas) reported that a Notice of Levy on a land owned by complainant and covered by Transfer Certificate of Title (TCT) No. T-32779 was registered on March 1, 2000 with the Register of Deeds of Calapan City.^[11]

In the meantime, on May 9, 2000, the RTC dismissed the petition for annulment of judgment for lack of merit.^[12] On May 23, 2000, Sheriff Abas continued to implement the 2000 Writ but complainant refused to vacate the leased premises.^[13] Defendants then filed an appeal to the Court of Appeals (CA), which affirmed the RTC.^[14] The case was further elevated to us via a Petition for Review on Certiorari. On March 12, 2007, we denied the petition and our resolution became final and executory on July 18, 2007.^[15]

Consequently, Civil Case No. 299 attained finality. Mingay then filed another Motion for Issuance of a Writ of Execution^[16] with the MCTC. A Writ of Execution^[17] dated June 26, 2008 (2008 Writ) was issued directing the implementation of the January 5, 2000 Decision of the MCTC.

Complainant thereafter filed the present administrative complaint before us, alleging that Sheriff Montemayor made it appear that the levied property was sold in public auction on March 17, 2009 for the bloated amount of P5 million. She claims that the sale was dubious, if not purely simulated. We quote her grounds in *verbatim*:

a) [T]he purported notice of auction sale was personally served by Sheriff Montemayor not on us but on a certain Dhorie dela Cruz who is not even

the addressee and whose name was merely printed without any indication whether she did really receive it and on what day and time did she receive it, copy of which is hereto attached as **ANNEX "G"**. The purported notice is clearly fabricated. Consequently, we were not duly notified of the scheduled auction sale, if such was scheduled, to enable us to take part, all in violation of our right to due process and Section 15 (d), Rule 39, Revised Rules of Court;

b) Aside from the absence of due written notice of the auction sale on us, there is nothing on record which will show strict compliance with the requirements of Section 15 (c);

c) [B]ased on the minutes of public auction sale, only one (1) bidder took part in the bidding, Emilio Mingay, in flagrant violation of A.M. 99-1005-SC requiring at least two (2) participating bidders to which Sheriff Montemayor cannot profess ignorance, copy of which is hereto attached under caption PRESENT as **ANNEX "H"**;

d) [A]ssuming arguendo that the public auction sale where Emilio Mingay supposedly bid for PhP5,000,000 or in excess of the minimum bid of PhP2,600,000 [0] was valid, Sheriff Montemayor, for reasons of his own, did not promptly deliver to my sister, the excess proceeds amounting to PhP2,400,000 in willful transgression of Section 19 of Rule 39 giving a ground for reasonable suspicion that Sheriff Montemayor pocketed or misappropriated the excess amount, to our great damage and prejudice.

Complainant avers that since the land was sold over and above the monetary judgment, Sheriff Montemayor made it difficult for her to redeem the land within the one (1) year redemption period. As a result, Mingay was able to cause the cancellation of complainant's title.

In his Comment,^[19] Sheriff Montemayor counters that complainant is guilty of forum shopping because she filed two (2) other suits against him: 1) Civil Case No. CV-10-6284,^[20] which is a case for annulment of certificate of sale and confirmation of sale annotated at the back of TCT No. T-32779 filed before RTC of Calapan City, Branch 39; and 2) a complaint for anti-graft and corrupt practices act filed before the Office of the Ombudsman.^[21] Sheriff Montemayor argues that the complaint is premature because Civil Case No. CV-10-6284 is still pending. Hence, there is no pronouncement yet that the implementation of the writ was fraught with irregularities.^[22]

Moreover, Sheriff Montemayor avers that:

- a. It was Sheriff Abas and not he who made the levy on March 1, 2000 through the Register of Deeds of Oriental Mindoro. This is evidenced by the annotation stated in TCT No. T-32779;^[23]
- b. He notified complainant and her family of the schedule of the auction sale as shown by the registry return card and the certification issued by the Postmaster of the Philippine Postal Corporation in Puerto Galera, Oriental

Mindoro;^[24]

- c. He complied with Section 15 (c) of Rule 39 of the Revised Rules of Court (the Rules). He posted a Notice of Sheriffs Sale of Property on Execution at the mandated locations, such as: the main entrance of the Office of the Clerk of Court, the bulletin board of the Provincial Capitol Building and the Municipal Hall of Puerto Galera and the Barangay Hall of Sabang, Puerto Galera as evidenced by the Certificate of Posting;^[25]
- d. A.M. No. 99-10-05-0 does not prohibit the participation of only one (1) bidder in an auction sale;^[26] and.
- e. The P5 million bid is considered small compared to the P16,935,737.00 demanded in the letter of Mingay's wife. Also, complainant and her family must pay the cost of the suit.^[27]

Complainant filed a Reply^[28] dated April 13, 2012 where she rebuts the defenses raised by Sheriff Montemayor and maintains that she is not guilty of forum shopping because the three (3) cases seek different reliefs. She also argues that as a sheriff, Sheriff Montemayor is duty bound to enforce only the writ of execution issued by the court and not the demand of the judgment obligee.^[29] Complainant attacks the manner by which the writ was implemented, noting that Sheriff Montemayor immediately levied upon complainant's real property without checking if her personal properties are sufficient. Complainant also observes that the minutes of the auction sale contain only meager facts on how the proceedings were had, not even stating whether the bid was paid in cash.^[30]

OCA Recommendation

In its Report^[31] dated January 21, 2013, the OCA found sufficient ground to hold Sheriff Montemayor administratively liable for grave misconduct and dishonesty. Preliminarily, the OCA ruled that no forum shopping exists and that the pendency of civil and criminal cases does not bar the filing of an administrative complaint. It found that Sheriff Montemayor has failed to perform what was expected of him under the rules. He has a ministerial duty to carry out only the judgment rendered by the court and not what the judgment obligee is demanding.^[32] The OCA further noted that Sheriff Montemayor was previously found liable for conduct prejudicial to the best interest of the service and meted the penalty of fine equivalent to his one (1) month salary.^[33] Hence, it recommended Sheriff Montemayor's dismissal from the service.^[34]

Issue

Whether Sheriff Montemayor should be held administratively liable for the acts complained of.

Ruling

At the outset, to set the facts straight, it is correct that Sheriff Montemayor did not make the levy on complainant's property. Per the Sheriffs Return dated May 29,

2000 and the inscription in TCT No. T-32779, it was Sheriff Abas who implemented the 2000 Writ. Thus, the allegation that Sheriff Montemayor erred in levying the land without first determining if complainant has sufficient personal property deserves scant consideration. Any irregularity on the levy of the real property cannot be imputed to him.

However, we find several procedural lapses in Sheriff Montemayor's conduct of the auction sale, which make him guilty of grave misconduct.

First, instead of personally serving the notice of the execution sale to the judgment obligor, Sheriff Montemayor sent the notice via registered mail, in transgression of Section 15 (d), Rule 39 of the Rules, which reads:

Sec. 15. *Notice of sale of property on execution.* — Before the sale of property on execution, notice thereof must be given as follows:

xxx

(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, **in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.** (Emphasis ours.)

In *Villaceran v. Beltejar*,^[35] we ruled that requirements for execution sales under Rule 39 of the Rules must be strictly complied with.^[36] The Rules require personal service of the notice to ensure that the judgment obligor will be given a chance to prevent the sale by paying the judgment debt sought to be enforced.^[37] If only Sheriff Montemayor personally served the notice, there would be no question on who "Dhorie dela Cruz" is and there would be no issue on whether the complainant has knowledge of the sale.^[38]

Second, Sheriff Montemayor stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice, Provincial Capitol Complex, Camilmil, Calapan City.^[39] The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution.^[40] In *Villaceran*, we held the sheriff therein liable for ignorance of this rule, as well.

Third, Sheriff Montemayor deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. Section 19, Rule 39 of the Rules provides:

Sec. 19. *How property sold on execution; who may direct manner and order of sale.* — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. **After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court.** When the sale is of