

EN BANC

**[A.M. No. RTJ-09-2189 (Formerly A.M. OCA IPI
No. 08-2837-RTJ), January 18, 2011]**

**VICTORIANO SY, COMPLAINANT, VS. JUDGE OSCAR E. DINOPOL,
REGIONAL TRIAL COURT, BRANCH 24, KORONADAL CITY,
RESPONDENT.**

DECISION

PER CURIAM:

We resolve in this Decision the Verified Complaint, dated March 11, 2008,^[1] filed by Victoriano Sy against Judge Oscar E. Dinopol of the Regional Trial Court (RTC), Branch 24, Koronadal City, South Cotabato, for Conduct Unbecoming a Member of the Judiciary and for Gross Ignorance of the Law, in relation to Civil Case No. 1403-24, entitled *Sps. Victoriano Sy and Loreta Sy v. Metrobank, for Annulment and/or Declaration of Nullity of Real Estate Mortgage*, and Misc. Case No. 1440-24, entitled *Metrobank v. Sps. Victoriano Sy, et al., for Issuance of a Writ of Possession*.

The Antecedents Facts

The facts are set out in the memorandum/report, dated May 25, 2009,^[2] of the Office of the Court Administrator (OCA), and are summarized below.

The Metropolitan Bank and Trust Company (*Metrobank*) was the mortgagee in good faith and for value of twenty-three (23) parcels of land all located in Koronadal City. The mortgagors were Marvella Plaza Hotel, Sprinter Lumber, Hardware and Auto Parts, Inc. and/or Sps. Victoriano Sy and Loreta Cabaies-Sy and/or Sps. Vicente and Antonia Mandanas.

Metrobank foreclosed the mortgage for violation of the terms and conditions of the mortgage agreement. At the public auction on August 31, 1998, the mortgaged parcels of land were sold to Metrobank as the highest bidder. Metrobank was issued a certificate of sale which was registered on September 18, 1998 with the Register of Deeds of South Cotabato. The mortgagors failed to redeem the 23 parcels of land within the redemption period.

Thereafter, Sps. Victoriano and Loreta Sy, and Sprinter Lumber, Hardware and Auto Parts, Inc. filed with the RTC, Branch 24, Koronadal City, presided over by Judge Dinopol, a complaint against Metrobank for *Annulment and/or Declaration of Nullity of Real Estate Mortgage, Extrajudicial Foreclosure Proceedings and Certificate of Sale, with Damages and Attorney's Fees and with prayer for the Issuance of a Temporary Restraining Order (TRO) and Preliminary Injunction*, docketed as Civil Case No. 1403-24.

On April 16, 2004, Judge Dinopol inhibited himself from further acting on the case^[3]

on the ground that he received a call, on April 12, 2004, from a ranking officer of the Philippine Judicial Academy, interceding in behalf of the defendant bank and an earlier call (July 2003) from a ranking personnel of the OCA, appealing in behalf of the plaintiffs. He claimed he wanted to avoid being charged with partiality either way he acted on the case.

On September 15, 2005, Metrobank filed with the RTC, South Cotabato, a *Petition for the Issuance of a Writ of Possession* over the parcels of land subject of the foreclosed mortgage against Marvella Plaza Hotel, Sprinter Lumber, Hardware and Auto Parts, Inc., and/or Sps. Victoriano and Loretta Sy, and/or Sps. Vicente and Antonia Mandanas, docketed as Misc. Case No. 1440-24,^[4] and assigned to the RTC, Branch 24, Koronadal City, presided by Judge Dinopol.

On July 13, 2006, Judge Dinopol issued an Order granting the petition,^[5] and issued the writ of possession on July 21, 2006.^[6]

Meanwhile, or on May 22, 2006, Sprinter Lumber, Hardware and Auto Parts, Inc. filed with the RTC, Branch 8, Marawi City, a petition, entitled *In the Matter of: Petition for the Declaration of State of Suspension of Payments with Approval of Proposed Rehabilitation Plan*, docketed as Corp. Case No. 1585-06.^[7]

On June 26, 2006, the RTC, Branch 8, Marawi City, issued an Order^[8] staying the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor. The same court subsequently approved the rehabilitation plan.

In the meantime, Sheriff Conrado B. Dapulung, Jr. proceeded to implement the writ of possession issued by Judge Dinopol, but it was returned unsatisfied in view of the stay order issued by the RTC, Branch 8, Marawi City, in Corp. Case No. 1585-06.^[9]

Consequently, the respondents in Misc. Case No. 1440-24 filed a Motion to Suspend Proceedings due to the issuance of the stay order and the approval of the rehabilitation plan by the Rehabilitation Court, and a motion for inhibition on grounds of bias and partiality on the part of Judge Dinopol. Judge Dinopol denied the motions in an Order dated February 11, 2008, and directed Deputy Sheriff Ricardo G. Publico to re-implement the writ of execution of July 31, 2006.^[10]

Shortly thereafter, Sy filed the present administrative complaint^[11] charging Judge Dinopol of gross ignorance of the law and conduct unbecoming a member of the judiciary.

Gross Ignorance of the Law

Sy alleged in his complaint that while Civil Case No. 1403-24 (in which he and his wife sought the declaration of nullity of the foreclosure proceedings against Metrobank) was pending before Judge Dinopol's sala, the judge inhibited himself from acting on the case. This notwithstanding, and to Sy's surprise, Judge Dinopol still handled Misc. Case No. 1440-24, a petition for the issuance of a writ of possession filed by Metrobank, a matter closely intertwined with Civil Case No. 1403-24. Judge Dinopol then issued an order granting Metrobank the right to

possess the foreclosed properties.^[12]

Sy further alleged that despite the issuance by the RTC, Branch 8, Marawi City, of a stay order^[13] and the approval of the rehabilitation plan, as well as the pendency of Metrobank's petition before the Court of Appeals (CA) Twenty-Third Division in Cagayan De Oro City (CA G.R. SP No. 01824) assailing the validity of the stay order, Judge Dinopol ordered that the writ of possession be implemented.^[14]

Conduct Unbecoming of a Judge

Sy claimed in relation with his charge that while Civil Case No. 1403-24 was pending in Judge Dinopol's sala, *the judge asked him for commodity loans in the form of construction materials* to be used in the construction of the judge's house. The transaction was evidenced by delivery receipt no. 15178 (March 8, 2005),^[15] and charge invoices no. 9817 (March 8, 2005) for P16,000.00,^[16] no. 9826 (March 9, 2005) for P850.00,^[17] and no. 9838 (March 10, 2005) for P780.00.^[18]

Sy further claimed that aside from the commodity loans, *Judge Dinopol obtained cash loans* from him on various occasions between December 2, 2005 to July 14, 2006, in the total amount of P121,000.00, and Judge Dinopol borrowed from him his Suzuki Multi-cab and returned it after the judge was suspended in September 2007. Sy presented disbursement vouchers, official receipts and an acknowledgement to prove his claim.^[19]

Judge Dinopol's Comment

In a 1st indorsement dated March 18, 2008,^[20] the OCA required Judge Dinopol to comment on the complaint, which he did on April 21, 2008.^[21]

Judge Dinopol denied Sy's accusations. He stressed that he inhibited himself from Civil Case No. 1403-24 on April 16, 2004 and had not acted on the case since then; nobody intervened and pleaded in behalf of Metrobank after Misc. Case No. 1440-24 was filed. He was not aware nor had he been given notice that Metrobank filed a petition before the CA (CA G.R. SP No. 01824), nor did he receive any order from the appellate tribunal enjoining him to desist from performing or acting on the incidents pending in Misc. Case No. 1440-24.

Judge Dinopol denied that he committed any breach of procedural rules that could be characterized as gross ignorance of the basic rules of civil procedures. He maintained that Sy did not allege any specific actuations of deceit, malice or intent to cause injury to Sy, and that he had acted fairly and objectively. He added that he observed the requirements of the Code of Professional Responsibility as a lawyer, relative to his handling of Misc. Case No. 1440-24.

With respect to the alleged accommodations he received from Sy at the time his house was under construction, Judge Dinopol claimed that when he obtained the commodity loans from Sy in March 2005, he had already inhibited himself from handling Civil Case No. 1403-24; he did so on April 16, 2004. He explained that Misc. Case No. 1440-24 was filed only on September 15, 2005, and was assigned to his sala on September 22, 2005. He denied that he received from Sy cash loans in

the amount of P121,000.00. He also denied borrowing Sy's Suzuki Multi-cab and claimed that it was Rogelio Villanueva who borrowed it.

Judge Dinopol countered that it was Sy who acted with sinister design and employed deceit and cunning to frustrate the administration of justice in the cases he handled.

In a Resolution dated July 15, 2009, the Court resolved to: (1) note Sy's complaint and Judge Dinopol's answer/comment; (2) re-docket the complaint as a regular administrative matter; and (3) require the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings. The Court also noted the OCA Report dated May 25, 2009,^[22] which found no basis for the charge of ignorance of the law on the part of Judge Dinopol, but found him liable for conduct unbecoming a judge.

The Court's Ruling

The OCA evaluation is well-founded. Judge Dinopol cannot be disciplined for ignorance of the law and of procedure in his handling of Civil Case No. 1403-24 (for *Annulment and/or Declaration of Nullity of Real Estate Mortgage*) filed by Sps. Victoriano and Loreta Sy against Metrobank, as he inhibited himself from the case, nor in his handling of Misc. Case No. 1440-24 (*Petition for the Issuance of a Writ of Possession*) filed by Metrobank against Sps. Victoriano Sy, et al., because of the essential nature of the proceeding itself.

In issuing the writ of possession and in directing its re-implementation when it was returned unsatisfied the first time it was enforced, Judge Dinopol acted in accordance with the rules and jurisprudence on the matter.

As the Court held in *Santiago v. Merchants Rural Bank of Talavera, Inc.*,^[23] the proceeding in a petition for the issuance of a writ of possession is *ex-parte* and summary in nature. It is brought for the benefit of one party only and may be granted even without notice to the mortgagor, in this case, complainant Sy. Moreover, the duty of the court to grant a writ of possession is a ministerial function. The court does not exercise its official discretion or judgment.^[24] Judge Dinopol, before whom the petition for the issuance of a writ of possession was filed, had no discretion on whether to issue the writ of possession or not. It cannot be said, therefore, that Judge Dinopol exposed himself or exhibited bias in favor of Metrobank when he issued the writ of possession.

Further, regardless of whether there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of the annulment case. Once the writ of possession is issued, the trial court has no alternative but to enforce the writ without delay.^[25]

From another perspective, a stay order only affects claims filed against the assets and properties belonging to a debtor. Properties that have already been foreclosed, and those whose titles have already passed on to the winning bidder are no longer considered properties of the debtor.^[26] In such case, it is a ministerial duty on the part of the trial court to grant a possessory writ over the foreclosed properties.^[27]

Clearly, Judge Dinopol was well within his authority and committed no impropriety in directing the re-implementation of the writ of execution in Misc. Case No. 1440-24.

On the other hand, we cannot say the same thing with regard to Sy's charge of *conduct unbecoming* against Judge Dinopol. The latter's denial of having committed the acts complained of flies in the face of indications in the records and documentary evidence that he obtained commodity loans from Sy in the form of building materials for the construction of his house in Koronadal City. There was also Sy's claim of cash loans to Judge Dinopol on various occasions, between December 2, 2005 and July 14, 2006, amounting to P121,000.00, as well as the loan of Sy's Suzuki Multi-cab to the Judge.

The commodity loans were evidenced by receipts^[28] indicating delivery of construction materials to Judge Dinopol's residence. The cash loans appear to have been covered by disbursement vouchers,^[29] and the borrowed multicab is the subject of an "acknowledgement"^[30] from Judge Dinopol's driver Rogelio Villanueva.

There is substantial evidence showing that Judge Dinopol obtained the commodity loans from Sy. The judge himself admitted that he wrote Sy, on March 4, 2005, regarding the purchase of materials for his house which was then under construction, although he claimed that it was his wife who transacted with Sy and it was Sy himself who offered to deliver the materials to his residence.^[31] Judge Dinopol pleaded innocence regarding the commodity loans or even the cash loans saying that the transaction with Sy regarding the construction materials occurred when there was no case pending in his sala where Sy was a party.

The above disclaimer notwithstanding, we find Judge Dinopol to have committed a serious impropriety in his or his family's financial or business dealings with Sy.

Canon 3 of the New Code of Judicial Conduct in relation to a judge's impartiality provides, *inter alia*, as follows:

Sec. 2. - Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary.

Sec. 3. - Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

Judge Dinopol violated the above provisions when he received accommodations from Sy for the building materials he needed for the construction of his house. He compromised his position as a judge. Although at the time he and his family had business dealings with Sy there was no pending case involving the businessman, he should have been more circumspect in securing the construction materials. The sphere of Sy's business operations was within his territorial jurisdiction. As the OCA aptly noted, "it is neither impossible nor remote that a case might be filed in his court with complainant as a party. In such a case, his (respondent) business and financial dealings with complainant would create a doubt about his fairness and impartiality in deciding the case and would tend to corrode the respect and dignity