

EN BANC

[A.M. NO. P-08-2450 (FORMERLY OCA IPI NO. 00-27-CA-P), June 10, 2009]

AURORA B. GO, COMPLAINANT, VS. MARGARITO A. COSTELO, JR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 11, CALUBIAN, LEYTE, RESPONDENT.

DECISION

PER CURIAM:

Before this Court is the affidavit-complaint^[1] dated June 19, 2003 filed by complainant Aurora B. Go with the Office of the Court Administrator (OCA), charging respondent Margarito A. Costelo, Jr., Sheriff IV of the Regional Trial Court (RTC), Branch 11, Calubian, Leyte, with grave misconduct, falsification and abuse of authority.

In her complaint, Go alleged that she executed a Deed of Absolute Sale in favor of her sister Anita Conde over a parcel of land covered by Tax Declaration No. ARP 09004-00109. On November 8, 2001, while the complainant was in Taiwan, she received a call from Conde, who informed her that respondent Sheriff was going to subject said parcel of land to an auction sale on that same day, pursuant to a Writ of Execution^[2] dated July 18, 2001 issued against complainant by the Municipal Trial Court in Cities (MTCC) of Cebu City in an ejectment case.^[3] Complainant advised Conde to avail herself of legal remedies such as filing a third-party claim to prevent the auction, but despite proof of ownership shown by Conde to respondent, the latter proceeded with the sale.

Complainant further alleged that respondent Sheriff: (1) took advantage of her absence from the Philippines and surreptitiously and hastily proceeded with the auctioning of the real property; (2) persisted in conducting the auction sale with patent partiality in favor of Doris Sunbanon, the prevailing party in the ejectment case; (3) made it appear that a person residing in the subject property received the notice of auction by falsifying the signature of the alleged person in the purportedly received copy of the notice, but such person was unknown to complainant and Conde; (4) failed to make proper posting of the notice of auction; (5) did not acknowledge the documents evidencing the transfer of ownership of property from complainant to Conde, and said that the Deed of Absolute Sale was "*gawa-gawa*" [simulated]; and (6) falsified the entries in the Certificate of Sale by stating that it was executed and notarized on November 8, 2001 by a certain Atty. Roberto dela Peña when in truth a certified photocopy of the notarial book of Atty. Dela Peña shows that no such document was notarized on said date or immediately thereafter.

Also, complainant stated that it was doubtful whether respondent actually conducted an auction sale on November 8, 2001, considering that a strong typhoon hit Calubian from November 6 to 8, 2001, as a result of which offices were closed. She

further averred that, on the day of the auction sale, Conde went to the Sheriff's Office, where she was told by respondent that there would be no auction sale that day. Conde was advised to bring the Deed of Sale and third-party claim to respondent's house, so that he could make a report to the MTCC, Branch 2, Cebu City that Conde was the new owner of the property. When Conde brought the required documents to respondent's house, she learned that respondent still failed to report to the court her claim over the property. This prompted Conde to file a Third-Party Claim^[4] on November 15, 2001 before the MTCC, Branch 2, Cebu City. However, when Conde went to respondent's office to deliver a photocopy of her third-party claim, respondent showed her the Certificate of Sale^[5] in the name of Doris Sunbanon, who was the highest bidder in the auction sale held on November 8, 2001.

On the other hand, respondent filed his Comment^[6] dated September 9, 2003, wherein he denied that he committed irregularities in auctioning the subject property, for a Levy on Execution had been made based on the certified true copy of the tax declaration issued by the Municipal Assessor of Calubian, Leyte and the same was duly annotated by the Register of Deeds for the Province of Leyte. He claimed that, before November 12, 2001, he had no knowledge that the property sold at public auction was owned by a certain Anita Conde, and that the sole basis of the Levy on Execution and the Sheriff's auction sale was the mere fact that the declared owner of the property was complainant Go, the losing party in the ejectment case. It was only when Conde filed her third-party claim that respondent came to know that there was a third-party claimant over the property in question.

Respondent also denied having described the Deed of Absolute Sale as "*gawa-gawa*." He averred that before he conducted the auction sale, he sent a copy of the Notice of Sale on Execution of Real Property to the complainant by registered mail, but it was returned with a notation "party moved out" and marked "RTS" by the Calubian Post Office. He, likewise, claimed that the auction sale had not been cancelled or postponed due to inclement weather, and that he had the Certificate of Sale duly notarized on November 8, 2001.

Respondent pointed out that the complainant executed the Deed of Absolute Sale in favor of Conde on January 24, 2001, barely two months after the Court of Appeals promulgated its decision in the ejectment case dated November 16, 2000 against complainant, which showed that the complainant transferred her property to prevent the court from levying the same.

On June 29, 2004, the OCA recommended that the complaint be referred to Judge Alejandro Diongzon of the RTC of Calubian, Leyte on the ground that the issues raised by the complainant could not be resolved on the basis of the submitted pleadings and documents alone, and that a full-blown investigation was necessary,^[7] a recommendation that the Court adopted in its Resolution^[8] dated October 20, 2004. However, on January 19, 2005, complainant filed with the OCA an Urgent Motion for Inhibition^[9] of Judge Diongzon claiming that the latter would be partial in handling the case, because said judge was the approving officer of the Certificate of Sale. In a Resolution^[10] dated April 20, 2005, the Court recalled its Resolution dated October 20, 2004 and, instead, directed Judge Crisostomo Garrido of the RTC of Carigara, Leyte to conduct an investigation and submit a report and recommendation thereon within sixty (60) days from receipt of the Resolution.

On May 17, 2006, respondent filed before the Court a Motion^[11] praying that the investigation of the case be returned to the RTC, Branch 11, Calubian, Leyte on the ground that Judge Diongzon had already retired. His motion was denied in a Memorandum^[12] of the OCA dated September 18, 2006.

In his Report and Recommendation^[13] dated February 20, 2007, Judge Garrido found respondent to have acted without authority in conducting a public auction sale of the subject property on execution, stating that:

Nowhere could be gleaned from the said order that Respondent Sheriff, Costelo, Jr. was authorized to conduct public auction sale of the property on execution. Neither was there any evidence presented that the Sheriff of MTCC, Branch 2, Cebu City has delegated such authority to Sheriff Costelo, Jr., to conduct a public auction sale of the property on execution. The Respondent Sheriff could have exercised prudence and restraint in the performance of his duty. Instead of conducting [a] public auction sale of the property on execution, he could have filed his return of the property levied, to the MTCC, Branch 2, Cebu City for its sheriff to conduct the public auction sale, pursuant to the provision of the 2nd paragraph of Sec. ^[6] Rule 39, 1997 Rules of Civil Procedure. Blinded by the expectation of sheriff's fees, the respondent sheriff had forgotten his bounden duties and responsibilities as employee of the judiciary that public office is a public trust.

The Certificate of Sale, Minutes of Auction Sale dated November 8, 2001, are fictitious, fabricated and spurious documents, mere concoction of facts to give a semblance of legality to the illegal acts of Sheriff Costelo, Jr. This evaluation finds support from the Certification issued by the Cebu PAGASA and the Philippine Coast Guard, Cebu Station, Cebu City, viz:

CERTIFICATION - Cebu PAGASA

On November 6, 7 & 8, 2001, Storm Signal No. 2, with heavy rains of gusty winds of 54 to 65 kilometers per hour were raised over the entire provinces of Cebu, Samar, Leyte, Dinagat Island, Bohol, Masbate and Panay Island, with rough to very rough seas, with wave height of 3 to 5 meters.^[14]

CERTIFICATION - Philippine Coast Guard

On these three days that the typhoon battered these islands in the Visayas, no vessels of 2000 gross tonnage and less were given clearance to leave Cebu for Leyte, Samar and other Visayan islands.^[15]

Evidence admissible when original document is a public record.

When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (emphasis theirs)

Obviously, it was impossible for the judgment creditor Doris Sunbanon to be present in Leyte on November 6, 7 & 8, 2001, moreso, in Calubian, Leyte attending a public auction sale on November 8, 2001 at the Office of the Regional Trial Court, Branch 11, Calubian, Leyte, when all water and air transportation facilities in Cebu were not given any clearance to leave for Leyte and the other Visayan islands. Experience had taught us that when PAGASA raises typhoon signal No. 2 over the provinces affected, school classes and offices, both public and private, are automatically suspended.

Judgment Creditor Doris U. Sunbanon was not presented in Court during the hearing of this case, to corroborate the allegation of Respondent Sheriff that she was present during the auction sale of the real property on execution on November 8, 2001 in Calubian, Leyte, nor in the days prior thereto. There was no evidence presented that indeed, Doris U. Sunbanon was in Leyte on the aforesaid dates. Not even hotel bills, receipts of her stay in Leyte or marine vessel or airplane tickets were presented for her return trip to Cebu City from Leyte, after the November 8, 2001 alleged auction sale, indicia of her absence in the public auction sale of the real property on execution on November 8, 2001.

Neither any of the Court personnel of RTC Branch 11, Calubian, Leyte, who were allegedly present and had signed the logbook on November 8, 2001 was presented in Court, to corroborate the testimony of Sheriff Costelo, Jr., that indeed, they were holding office on November 8, 2001, despite typhoon signal no. 2 in the provinces of Samar and Leyte, indicative that the logbook allegedly signed by [the] Court employees is spurious and of doubtful authenticity, unavailing and undeserving credit for it can be easily accomplished to serve one's ulterior motive.

The validity, genuineness, authenticity and due execution of the Certificate of Sale issued by Respondent Sheriff Costelo, Jr., dated November 8, 2001, was put in issue when Notary Public Roberto Dela Peña of Calubian, Leyte, who allegedly notarized the Certificate of Sale on November 8, 2001 was put to the witness stand. Roberto Dela Peña denied that he notarized the alluded Certificate of Sale and that his signature appearing on the acknowledgment portion of the said document is fake, a product of falsification and forgery. The entries denominated as Document 161, Page 37, Book 3, Series of 2000, appearing on the Certificate of Sale were forged, falsified and fictitious entries.

Document No. 161, Page No. 37, Book 3, Series of 2000 as entered in the Notarial Register of Notary Public Roberto Dela Peña refers to a document denominated as Cancellation and Discharge of Mortgage, executed by and between Spouses Fileo and Angeles Arias, and Baruel Rimandaman, Leonila B. Pepito and Alfredo Lagora, and not the Certificate of Sale issued by the respondent sheriff.

Court's observation and examination of the said entries on page 37 of the Notarial Register of Roberto Dela Peña, appears to be genuine and authentic, without any erasure or alteration, written in freehand writing

and in chronological order of events, written in the middle portion of page 37 of the notarial registry, indicative that the document entered thereto is the true act of the notary public in recording his transaction for the day, pursuant to his oath of office.

There is credence to the testimony of Roberto Dela Peña that the Certificate of Sale issued by the respondent sheriff, was fictitious, falsified and a product of forgery. Moreover, Roberto Dela Peña, being 70 years old and in the twilight of his life, testified clearly and in a straightforward manner, relative to the entries on page 37 of his Notarial Register. Other infirmities in the other pages in his Notarial Register could only be attributed to old age.

Sheriff Margarito Costelo, Jr. having acted without [any] authority to conduct a public auction sale of the real property on execution, the public auction sale is illegal, invalid and *void ab initio*. Under the rules, *supra*, the public auction sale of the real property on execution shall only be conducted at the office of the Clerk of Court, MTCC, Branch 2, Cebu City, the Court which issued the Writ of Execution.

Judiciary officers must, at all times, be accountable to the people. They serve with utmost degree of integrity, responsibility, loyalty and efficiency in their duties. In the case at bar, respondent sheriff, Margarito Costelo, Jr. has [been] remiss of his duties and must account to the people who repose their trust on him. Such grave misconduct committed by the respondent sheriff, deserves the highest degree of sanctions. The respondent sheriff is a disgrace to the Judiciary.

WHEREFORE, premises considered, it is most respectfully recommended:

1. That the public auction sale of real property on execution be declared Null and Void;
2. That respondent MARGARITO COSTELO, JR., be dismissed from the service for Grave Misconduct, Dishonesty and unfit of a judicial officer (sic), with forfeiture of all benefits, except leave credits, if any, with prejudice for re-employment in the government or any agency and instrumentality thereof, including government-owned and controlled corporations.

RESPECTFULLY RECOMMENDED.^[16]

On March 22, 2007, respondent filed with the RTC of Carigara, Leyte, a Motion for Reconsideration^[17] of the Report and Recommendation of Judge Garrido; and on June 1, 2007, an Omnibus Supplemental Motion for Reconsideration/Motion to Re-Open the Case and to Inhibit the Investigating Judge.^[18] He claimed that the penalty of dismissal from service was too harsh, considering the circumstances of the case, and submitted the following to support his motion: (1) affidavit^[19] of Roberto dela Peña recanting his earlier affidavit and testimony that his signature in the Certificate of Sale was falsified; (2) Daily Time Records^[20] of the court employees of the RTC, Branch 11, Calubian, Leyte, showing perfect attendance and no late days for the month of November 2001, except for Utility Worker Elpidio