

## EN BANC

[ A.M. No. P-03-1680, May 27, 2004 ]

**JUDY SISMAET, COMPLAINANT, VS. ERIBERTO R. SABAS, CLERK OF COURT IV, MTCC PUERTO PRINCESA CITY AND ERNESTO T. SIMPLICIANO, SHERIFF III, MTCC PUERTO PRINCESA CITY, RESPONDENTS.**

### RESOLUTION

**CORONA, J.:**

This concerns the letter-complaint dated March 3, 1999 filed with the Office of the Court Administrator (OCA) by Judy Sismaet against Eriberto Sabas, Clerk of Court IV, and Ernesto Simpliciano, Sheriff III, both of the Municipal Trial Court in Cities (MTCC) of Puerto Princesa City, for grave misconduct and dishonesty, relative to Barangay Case No. 018-95 entitled "Sps. Pedro and Judy Sismaet vs. Sps. Anatolio and Marilyn Baylon," for specific performance.

The case stemmed from the special power of attorney executed by complainant Judy Sismaet and her husband in favor of Spouses Anatolio and Marilyn Baylon allowing the latter to use complainant's property as collateral for their loan application. The bank approved the loan in the amount of P250,000. The Baylons, however, failed to pay the loan and to avoid foreclosure, the Sismaets advanced the amount outstanding, with the following agreement executed on May 3, 1995 before the Lupon of Barangay Tinguiban, Puerto Princesa City (the "Kasunduan").

1. *Na ang titulo ng lupa ay tutubusin ng ikalawang party at ibabalik sa unang party ngayong Mayo 30, 1995.*
2. *Na kapag hindi ito naibalik sa amin kami ay magsasampa ng demanda laban sa mag-asawang Baylon upang matupad ang aming kasunduan na ginawa sa harap ni Attorney Edgar O. Palay.*
3. *Na kung hindi nila matupad ang pagsauli sa panahon na ibinigay sa ikalawang party sila ay mag-e-execute ng Deed of Transfer or Conveyance pabor sa unang party.*
4. *Na kung hindi nila maibabalik ang titulo ng lupa kami ang siyang magbabayad o tutubos sa banko sa dahilan na ang interest ay lumalaki at upang hindi maforeclose ng bangko.*

Na ang kasunduang ito ay ginawa namin ng walang nag-utos o tumakot sa amin na sa katunayan kami ay lalagda sa ilalim ng Kasunduang ito.<sup>[1]</sup>

The Baylons still failed to comply with their undertaking, prompting the complainant to file a civil case for specific performance at the MTCC of Puerto Princesa City.

Ruling in favor of the spouses Sismaet, then MTCC Judge Fernando R. Gomez, Jr. issued a writ of execution dated December 6, 1996 directing respondent *ex-officio* sheriff Eriberto Sabas to enforce the Kasunduan by requiring the Baylons to execute the Deed of Transfer of Lot Nos. 26 and 27 at the United Homeowners Subdivision and the ten-hectare parcel of land covered by Tax Declaration No. 14-1466-A. The pertinent portion of the writ of execution stated:

Now therefore, you are hereby commanded to enforce the said KASUNDUAN by requiring the defendants, Anatolio Baylon and Marilyn Baylon, to execute a Deed of Transfer of their property mentioned in their Agreement acknowledged by Notary Public, Edgar O. Palay and specified in no. 2 of said Agreement as security in favor of spouses complainants;

That said property is described in the Agreement as follows:

1. Lot Nos. 26 and 27, of the United Homeowners Subdivision, Barangay Tiniguiban, Puerto Princesa City, with residential house made of concrete, G.I. roofings, and
2. A parcel of land located at Barake, Aborlan, Palawan with an area of ten (10) hec., more or less, covered by Tax Declaration No. 14-1466-A.

Return of this writ shall be made by you at anytime not less than ten (10) days nor more than sixty (60) days after receipt hereof.<sup>[2]</sup>

The execution of the writ was deferred because the spouses Baylon appealed to the Regional Trial Court (RTC) which, however, upheld the MTCC's December 6, 1996 writ of execution. Accordingly, incumbent MTCC Judge Jocelyn Sundiang-Dilig issued an alias writ of execution on September 22, 1997 which was, however, never served on the parties. This prompted complainant to seek an explanation from Sabas who could only say: "*Nakikiusap si Mrs. Baylon na magbabayad na lang siya, pagbigyan natin. Hintayin natin ang pagbabayad nila hanggang October 24, 1997. Kawawa naman sila.*"<sup>[3]</sup>

On October 23, 1997, Sabas summoned complainant to his office and offered money from the spouses Baylon. When complainant refused, Sabas furiously shouted: "*Bakit ba gusting-gusto mo ang lupa nina Baylon?*"<sup>[4]</sup> He then showed her an alias writ of execution dated October 16, 1997. A close scrutiny thereof, however, revealed that the *alias* writ in the possession of Sabas differed substantially from the December 6, 1996 writ issued by Judge Gomez. There was a new provision (in italics below) giving the sheriff the option to collect cash from the judgment debtors:

NOW, THEREFORE, you are hereby commanded to cause the execution of the aforesaid writ strictly in accordance with the terms of the agreement and the "*kasunduan*" by *collecting from the defendants jointly and severally the entire amount of P303,020.00* and turn over the same to plaintiff with interest at the legal rate effective December 1, 1995, until fully paid;

Should defendants fail to pay the aforesaid amount, then you are commanded to strictly enforce the terms and conditions set forth in the agreement and "*kasunduan*" and turn over to plaintiffs the real properties

of defendants specified in the agreement and "kasunduan" which must be read together.

This writ shall have a lifetime of five (5) years, nevertheless, you are required to make a return hereof every thirty (30) days until the same is fully satisfied.<sup>[5]</sup> (*italics supplied*)

Confronted with the discrepancy, Sabas merely shrugged: "*Eh kasi mali ang ginawa ni Judge Gomez.*"<sup>[6]</sup> Complainant filed a motion for clarification of the writ of execution. After Judge Dilig was apprised of the discrepancy during the hearing, she ordered the quashing of the October 16, 1997 alias writ and the issuance of a new one to conform with the December 6, 1996 order of Judge Gomez:

After conducting a clarificatory hearing on the Writ of Execution issued by this Court on October 16, 1997, the Court noted that the said writ was erroneously issued because the Decision issued by the Hon. Nelia Yap Fernandez dated April 17, 1997 affirmed the appealed Order issued by this Court on December 6, 1996.

There is nothing in the Order of December 6, 1996 which mandated the defendants to pay the amount of P303,020.00. Contrary to the said Writ dated October 16, 1998, the December 6, 1996 Order sought to enforce the "Kasunduan" executed before the Barangay Level. The said "Kasunduan" clearly provides the obligation of the defendants to return the property of the plaintiff on May 30, 1995. <sup>[7]</sup>

Again, the Baylons elevated the said order to the RTC but it was acted on unfavorably.

On October 30, 1998, another alias writ of execution was issued to enforce the *Kasunduan* but, before the same could be served, Ligaya Bautista, complainant's sister-in-law and a neighbor of the Baylons at the United Homeowners Association, informed complainant that a certain Alicia Mendoza and her family had moved into the house of the Baylons on November 19, 1998. Complainant then went to the house of respondent sheriff Simpliciano who showed her an undated sheriff's return signed by Sabas in his capacity as ex-officio sheriff, stating in part as follows:

This is to certify that on November 6, 1998, the undersigned served the Writ of Execution issued by this court dated October 30, 1998, in order to enforce the judgment of the court in the above-entitled case. It turned out however, that the house and the two adjoining lots on which it is erected, all subject of the writ, is no longer occupied by the defendants, but by a third party, Mrs. Alicia E. Mendoza, who claims to have purchased the same from the defendant spouses, Anatolio and Marilyn Baylon.<sup>[8]</sup>

Complainant went to the office of Sabas and confronted him about the sheriff's return but the latter answered: "*Bakit ay, hinihintay lang naman ni Alicia Mendoza na umalis si Baylon at siya na nga ang lilipat. Alam naman ng buong korte na ang hangad mo lang ay makuha mo ang bahay in Baylon at kung tutuusin ay mas malaki ang perang galing kay Alicia.*"<sup>[9]</sup> Complainant then asked Sabas to correct his report but the latter refused. Hence, this complaint.