

SECOND DIVISION

[A.M. No. P-01-1464 (Formerly OCA IPI. No. 99-730-P), March 13, 2001]

SALVADOR O. BOOC, COMPLAINANT, VS. MALAYO B. BANTUAS, SHERIFF IV, RTC, BRANCH 3, ILIGAN CITY, RESPONDENT.

RESOLUTION

DE LEON, JR., J.:

An affidavit-complaint dated August 31, 1999 was filed before the Office of the Court Administrator (OCA) by Salvador Booc charging Malayo B. Bantuas, Sheriff IV of the Regional Trial Court (RTC), Branch 3, Iligan City with Gross Ignorance of the Law and Grave Abuse of Authority relative to Civil Case No. 1718 entitled, "Felipe G. Javier, Jr. vs. Rufino Booc."

Complainant is the President of five Star Marketing Corporation. On August 22, 1994 herein respondent Sheriff Malayo B. Bantuas, pursuant to a Writ of Execution issued in Civil Case No. 1718 filed a Notice of Levy with the Register of Deeds, Iligan City over a parcel of land covered by TCT No. T-19209 and owned by Five Star Marketing Corporation. Complainant alleged that respondent sheriff, at the instance of plaintiff, former Judge Felipe Javier, proceeded to file the Notice of Levy despite respondent sheriff's knowledge that the property is owned by the corporation which was not a party to the civil case.

On July 31, 1995, the corporation through the complainant reiterated to respondent sheriff that it was the owner of the property and Rufino Booc had no share or interest in the corporation. Hence, the corporation demanded that respondent sheriff cancel the notice of levy, otherwise the corporation would take the appropriate legal steps to protect its interest.

Respondent sheriff, however, did not heed the corporation's demand inasmuch as on August 20, 1999 the corporation received a "Notice of Sale on Execution of Real Property," dated August 11, 1999, covering the subject property. Respondent sheriff scheduled the public auction on August 31, 1999. Consequently, the corporation, to protect its rights and interests, was compelled to file an action for Quieting of Title with the RTC, Branch 4 of Iligan City.

Respondent sheriff, in his answer to the complaint filed against him before the OCA, said that he filed a Notice of Levy with the Register of Deeds of Iligan City on the share, rights, interest and participation of Rufino Booc in the parcel of land owned by Five Star Marketing Corporation. Respondent sheriff claimed that Rufino Booc is the owner of around 200 shares of stock in said corporation according to a document issued by the Securities and Exchange Commission.

Respondent sheriff stressed that the levy was made on the share, rights and/or

interest and participation which Rufino Booc, as president and stockholder, may have in the parcel of land owned by Five Star Marketing Corporation. Claiming that he was only acting pursuant to his duties as sheriff, respondent cited Section 15, Rule 39 of the Rules of Court which states that

x x x The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value of the judgment debtor not exempt from execution.

Real property stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of execution.

Respondent sheriff said that while complainant Salvador Booc made a demand for the cancellation of levy made, the former deemed it wise to have the judgment satisfied in accordance with Section 39 of the Rules of Court. Respondent sheriff added that the trial court where the case for Quieting of Title filed by the corporation was pending ordered the auction sale of the shares of stock of Rufino Booc. The corporation allegedly never questioned said order of the RTC.

Finally, respondent sheriff averred that the corporation is merely a dummy of Rufino Booc and his brother Sheikding Booc. Respondent sheriff submitted as an exhibit an affidavit executed by Sheikding Booc wherein the latter admitted that when Judge Felipe Javier won in the civil case against Rufino Booc, the latter simulated a transfer of his shares of stock in Five Star Marketing Corporation so that the property may not be levied upon.^[1]

Complainant, in his reply to respondent sheriff's comment belied the latter's allegation that the corporation never questioned the auction sale. Complainant averred that contrary to the respondent sheriff's assertion, the trial court in fact issued a restraining order which was withdrawn after plaintiff's counsel manifested that the respondent sheriff would only auction Rufino Booc's shares of stock in the corporation and not the subject property.

The OCA found respondent sheriff liable for the charges filed against him, stating that respondent sheriff acted in bad faith when he auctioned the subject property inasmuch as Judge Mangotara had already warned him that the public auction should pertain only to shares of stock owned by Rufino Booc in Five Star Marketing Corporation. Respondent sheriff, however, in violation of the order issued by Judge Mangotara and in disregard of the manifestation filed by plaintiff's counsel that the sale should involve only the shares of stock, proceeded to auction the subject property. The OCA, thus, made the recommendation that:

- 1) The instant case be RE-DOCKETED as a regular administrative matter; and
- 2) Respondent Sheriff Malayo B. Bantuas be FINED in the amount of Ten Thousand Pesos (P10,000.00) for conducting the auction sale in violation of the terms of the order issued by Acting Presiding Judge Mamindiara P. Mangotara with a STERN WARNING that a commission of