

EN BANC

[A.M. No. P-98-1276, September 25, 1998]

EDGAR P. REMOLLO, COMPLAINANT, VS. ATTY. THELMA A. GARCIA, CLERK OF COURT, REGIONAL TRIAL COURT, DUMAGUETE CITY, RESPONDENT.

D E C I S I O N

BELLOSILLO, J.:

EDGAR P. REMOLLO, in a sworn letter-complaint dated 4 March 1997,^[1] charged respondent Atty. Thelma A. Garcia, Clerk of Court and Ex Officio Provincial Sheriff, Regional Trial Court of Negros Oriental, with misfeasance, bias, ignorance of the law and usurpation of judicial functions. The complainant alleged that respondent persistently refused to perform her ministerial duty to execute a Sheriff's Final Deed of Sale over forty-three (43) parcels of land in Negros Oriental sold at public auction in 1986 despite the expiration of the period for their redemption on 27 October 1989; that such refusal was a clear manifestation of bias in favor of respondent's deceased brother-in-law Julio P. Garcia and his wife Josefa who were the judgment debtors in Civil Case No. 5221; and, that respondent still refused to execute the Final Deed of Sale despite the final and executory decision dated 26 June 1996 of the Court of Appeals in CA-G. R. SP-34649,^[2] an appeal interposed by complainant and his sister Rosario R. Habaña from Civil Case No. 10109 for mandamus, the dispositive portion of which pertinently reads -

x x x x the judgment of respondent court dated May 4, 1994, is hereby REVERSED and SET ASIDE, and another one is entered ordering ATTY. THELMA A. GARCIA, Clerk of Court and Ex-Officio Provincial Sheriff of Negros Oriental, to execute the Sheriff's Final Deed of Sale of the subject parcels of land in favor of the petitioners within thirty (30) days after the finality of this decision in order to avoid any further delay in the enforcement, execution and satisfaction of the judgment in Civil Case No. 5221, which, as affirmed by the Supreme Court in G. R. No. 53429, has become final and executory on August 23, 1985 (underscoring supplied).

^[3]

As gleaned from the decision of the Court of Appeals, this administrative complaint traces its roots to Civil Case No. 5221, an action for possession, ejectment, receivership and damages filed by complainant's parents Proceso and Rosario Remollo against respondent's brother-in-law Julio Garcia and his wife Josefa.

On 28 March 1974 judgment was rendered in favor of complainant's parents declaring respondent's brother-in-law and his wife to be possessors and planters in bad faith. The decision became final and executory on 23 August 1985 after it was affirmed by this Court on 13 June 1980.^[4]

To satisfy the money judgment, forty-three (43) parcels of land belonging to the Garcia spouses were sold at public auction for P229,487.10. The highest bidders were the heirs of the deceased Remollo spouses who were the judgment creditors, namely: Maria Azucena, Rosario, Proceso Jr., Rufinita and herein complainant Edgar, all surnamed Remollo. A Sheriff's Certificate of Sale was issued on 12 February 1986 by then Clerk of Court and Ex Officio Provincial Sheriff, Atty. Benjamin V. Diputado, and registered with the Register of Deeds on 27 October 1988. However, despite the expiration of the twelve-month period for redemption on 27 October 1989, respondent Atty. Garcia, who was then already the Clerk of Court and Ex Officio Provincial Sheriff, refused to execute a Sheriff's Final Deed of Sale allegedly because the heirs of the judgment debtors, who happened to be her nephews and nieces, were making partial payments of the judgment obligation by paying the Remollo account with the Philippine National Bank. This prompted Rosario, Maria Azucena and Edgar Remollo, three (3) of the judgment creditors' heirs, to execute an Affidavit of Consolidation in lieu of the Sheriff's Final Deed of Sale.

On the other hand, respondent executed a Certificate of Redemption dated 11 June 1990 which the heirs of the judgment debtors presented for registration with the Register of Deeds on 20 December 1991. When their Affidavit of Consolidation was denied registration on the ground that such a document was proper only in foreclosures of mortgage, siblings Edgar and Rosario Remollo instituted Civil Case No. 10109 for mandamus as well as an administrative case with this Court^[5] to compel respondent to execute the Sheriff's Final Deed of Sale. On 14 September 1992 the administrative case docketed as A.M. No. P-92-722 was provisionally dismissed to await the outcome of the petition for mandamus. However when respondent allegedly still refused to execute the Sheriff's Final Deed of Sale despite the Court of Appeals' directive for her to do so in CA-G.R. SP-34649, the appealed mandamus case, complainant Edgar P. Remollo refiled this administrative complaint against respondent.

In her *Comment* filed on 24 October 1997 respondent alleged that she already complied with the decision of the Court of Appeals when she executed and signed on 5 March 1997 the subject Sheriff's Final Deed of Sale in favor of Rosario, Edgar, Maria Azucena, Rufinita, Proceso Jr. and Arthur, all surnamed Remollo, in their capacity as heirs of the judgment creditors in Civil Case No. 5221; and, that complainant was informed through his counsel of the execution of the Deed of Sale by means of a letter dated 17 March 1997 of the Branch Clerk of Court, RTC-Br. 38, Dumaguete City. Respondent contended that she did not execute the Sheriff's Final Deed of Sale when the period for redemption first expired on 27 October 1989 because of on-going negotiations between complainant's other siblings, namely, Maria Azucena, Proceso Jr., Rufinita and Arthur, on one hand, and the heirs of the judgment debtors on the other, for the redemption of the parcels of land.

In his *Reply* to respondent's *Comment* complainant countered that the agreement for the redemption of the parcels of land after the expiration of the one-year period for redemption on 27 October 1989 was not sanctioned by him nor by his sister Rosario, hence, it was still ministerial for respondent to execute the Deed of Sale. In addition, complainant averred that the Sheriff's Final Deed of Sale executed on 5 March 1997 did not comply with the Court of Appeals' decision for respondent "*to execute the Sheriff's Final Deed of Sale x x x in favor of the petitioners x x x*" as it was executed in favor of all the Remollo siblings instead of only in his name and that of his sister Rosario being the only petitioners in Civil Case No. 10109 for

mandamus. Furthermore, it contained a rider not ordered by the Court of Appeals, thus -

HOWEVER, MRS. AZUCENA R. VDA. DE QUANZON, ARTHUR REMOLLO, PROCESO REMOLLO, JR., and RUFINITA R. ESPINA, abandon, quit and waive all their rights, shares, interests and participation of (sic) the above-described parcels of land together with the improvements existing thereon in favor of defendant-judgment debtors JULIO GARCIA, ET AL., in a document entitled AFFIDAVIT OF WAIVER duly notarized by Notary Public ROTHELIO LUMJOD x x x attached and form an integral part hereof.

Complainant asked that respondent be meted the maximum penalty under the law for continually and unjustifiably denying them the fruit of their legal victory for nearly a decade despite court orders for her to do so.

On 24 November 1997 we referred this case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. In its report dated 4 March 1998 the OCA recommended the imposition of a P5,000.00-fine upon respondent after finding her to be remiss in the performance of her ministerial functions.

We agree with the OCA that respondent is administratively liable for her failure to execute the Sheriff's Final Deed of Sale. However we are unable to agree with the recommended penalty. From the records it is clear that respondent was not simply remiss or neglectful of her duties as Ex Officio Provincial Sheriff. On the contrary, and in fact, she intentionally refused to execute a Sheriff's Final Deed of Sale despite the clear mandate in Sec. 35, Rule 39 of the Rules of Court,^[6] as well as Chapter VIII, Sec. D, par. (2) (u), of the Manual for Clerks of Court that the sheriff shall execute the corresponding deed of conveyance in favor of the purchaser upon the expiration of the twelve-month period given the judgment debtor within which to redeem properties sold at public auction.

Respondent attempted to justify her inaction with the claim that the heirs of the judgment debtors - who are her nephews and nieces - were allegedly negotiating with the heirs of the judgment creditors-purchasers for the redemption of the properties beyond the twelve-month period. However, respondent was well aware that only some of the judgment creditors, namely, Maria Azucena, Proceso Jr. and Arthur, were in such an agreement with the heirs of the judgment debtors, and that at least two (2) of the judgment creditors-purchasers, namely, herein complainant and his sister Rosario Habaña, were opposed to giving the heirs of the judgment debtors an extension of the redemption period as in fact they had been demanding that respondent execute the Final Deed of Sale.

It is well-settled that a sheriff's functions are purely ministerial, not discretionary.^[7] The *Manual for Clerks of Court* categorically states that -

Sheriffs are ministerial officers. They are agents of the law and not agents of the parties, neither of the creditor nor of the purchaser at a sale conducted by him. It follows, therefore, that the sheriff can make no compromise in an execution sale x x x x It is not his duty to decide on the truth or sufficiency of the processes committed to him for service (underscoring ours).