

## FIRST DIVISION

[ A.M. No. P-97-1240, June 19, 1997 ]

**ATTY. WILFREDO C. BANOOGON, COMPLAINANT, VS. FELIPE T. ARIAS, SHERIFF III, OFFICE OF THE CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, DAVAO CITY, RESPONDENT.**

### DECISION

**VITUG, J.:**

In an affidavit-complaint, dated 20 December 1995, Atty. Wilfredo C. Banogon, Vice President for Legal and Claims, of Great Pacific Life Insurance Corporation ("Grepalife"), charged Sheriff Felipe T. Arias of the Municipal Trial Court in Cities ("MTCC"), Office of the Clerk of Court, Davao City, with "Gross Misconduct and/or Conduct Prejudicial to the Service" relative to the latter's actuations on the levied property of defendant Al Fresco Development Corporation ("Al Fresco") in Civil Case No. 23037 before the Metropolitan Trial Court ("MTC") of Makati.

Grepalife, the plaintiff in Civil Case No. 23037, levied on execution the property of Al Fresco located in Davao that included three parcels of land covered by Transfer Certificates of Title ("TCT") No. T-106641, T-106642 and T-104193. On 03 April 1987, the writ of execution and the notice of levy were annotated on the copies of the aforementioned TCTs. On 18 May 1992, at the instance<sup>[1]</sup> of respondent Sheriff, the entries on the certificates were cancelled and new Certificates of Title No. T-176514, T-176519 and T-176515 were issued in favor of one Benjamin Remoquillo. In his letter of 22 October 1992 addressed to Grepalife, respondent Sheriff enclosed a Security Bank check in the amount of P94,461.04 issued by Remoquillo for the "redemption of the lots." In a communication, dated 09 October 1992, it sent to Remoquillo, Grepalife wrote back:

"This has reference to your offer to release the three (3) lots in Davao City for the amount of P94,000.00.

"We are pleased to inform you that the Company is willing to consider your offer if the same is increased to P200,000. If you are amenable to said proposal, you may forward to us the check of P94,000 with the balance to be paid within 6 (six) months and covered by post dated checks."<sup>[2]</sup>

Grepalife subsequently learned of the cancellation of the writ of execution and notice of levy on TCT No. T-106641, T-106642 and T-104193 when it tried to verify the status of the TCTs.

Complainant, in his affidavit-complaint, denounced the actuations of respondent Sheriff, particularly his misrepresentation with the Register of Deeds that the judgment award was already fully satisfied when there was, in fact, still a deficiency in the sum of P382,070.63.

In his 1st endorsement, dated 05 January 1996, Deputy Court Administrator Reynaldo L. Suarez required respondent Sheriff to comment on the affidavit-complaint.

In his compliance, dated 24 February 1996, respondent Sheriff admitted that the lots covered by TCT No. T-104193, T-106642 and T-106641 in the name of Al Fresco were among the property he levied by virtue of a writ of execution issued by the Makati MTC. On 19 May 1992, Benjamin Remoquillo paid, on behalf of Al Fresco, the judgment indebtedness, computed to be in the amount of P94,461.04 inclusive of interests,<sup>[3]</sup> on which basis respondent Sheriff then advised the Register of Deeds of Davao City that eventually led to the cancellation of the annotations on the certificates of title covering the lots. Respondent thereupon made a Sheriff's Return, dated 19 May 1992, to the MTC to the effect that Al Fresco's indebtedness in Civil Case No. 23037 had been fully paid.

In his reply, dated 01 March 1996, complainant countered that when respondent Sheriff transmitted the check to Grepalife on 22 October 1992, the notice of levy on execution had already been canceled. Complainant noted that the check bore the date 19 May 1992 while respondent Sheriff's letter to the Register of Deeds was dated the day previous (18 May 1992). Complainant added that the subject property could not have been subject to redemption since there was as yet no execution sale.

In his rejoinder<sup>[4]</sup> of 20 March 1996, respondent Sheriff averred that when he requested, on 18 May 1992, the Register of Deeds to cancel the annotations of the certificates of title, the check, although dated 19 May 1992, was already in his possession. On 19 May 1992, he requested the Grepalife office in Davao to get the Check but the corporation did not pick it up. He claimed that the computation on the judgment debt was made by Atty. Justino Marquez himself who was then the counsel of Grepalife.

In a memorandum addressed to Chief Justice Andres R. Narvasa, dated 11 June 1996, the Office of the Court Administrator ("OCA"), through Deputy Court Administrator Reynaldo L. Suarez, made the following findings and recommendation:

"It would seem that it is quite unfair that complainant is charging Sheriff Arias with accepting the payments by Benjamin Remoquillo while he did not complain against Sheriff Arias for the amounts paid by Liwayway Paulino and Rosita Miyoshi for the indebtedness of Al Fresco with Grepalife regarding only the account corresponding to their claimed lots.

"A little mathematics will show that it is not so.

"In his letter dated May 18, 1992, Sheriff Arias wrote the Register of Deeds 'that the defendants already paid the money judgment x x to the

full satisfaction of ` Grepalife. He indicated that the titles involved were: T-106641, T-106642 and T-104193.

"The bid price by Grepalife for said three lots is as follows:

"1. T-106641 - P 15,000.00

"2. T-106642 - 15,000.00

"3. T-104193 - 30,000.00

Total- P 60,000.00

"Following the method of computation alleged by Sheriff Arias to have been given him by Atty. Justino Marquez, the following [would] be the total obligation due on the three lots claimed by Benjamin Remoquillo:

"Principal	-----	P60,000.00
x interest rate p.a.	-----	.12
	-	
= interest p.a.	-----	P
x years: Sept 1/83-	-	7,200.00
Aug 31/91	-----	8
	-	
= interest for 8 years	-----	P57,600.00
+ interest: Sept 1/91-May	-----	6,120.00
19/92	-	
Total interest due	-----	
+ principal amount due	-----	63,720.00
	-	
Total obligation for 3 lots	-----	<u>P123,720.00</u>

"Following this same method of computation, since Paulino paid only P45,000.00 on December 9, 1988, she must have paid for only one (1) lot out of the three (3) which were indicated in the margin of the Notice of Levy as hers, namely T-104211, T-104213, and T-104212. The bid prices for said lots are P33,304.44, P31,254.93 and P33,475.23, respectively. Adding the proportionate costs for expenses, the amounts to be paid by Paulino rose to P43,500.31, P41,204.86 and P43,691.59, respectively.

"The same is true for Miyochi. Her lot is T-106637 with a bid price of P15,000.00. Adding the interest for 6 years and the proportionate cost of the expenses would be P31,999.34. It is to be noted, though, that she paid only P30,000.00. One cannot begrudge the seeming generosity of the judgment creditor when the same is displayed.