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THIRD DIVISION

[A.M. No. P-96-1227, October 11, 1996]

RENATO L. LIRIO, COMPLAINANT, VS. ARTURO A. RAMOS, SHERIFF, REGIONAL TRIAL COURT, BRANCH 66, MAKATI CITY, RESPONDENT.

D E C I S I O N

DAVIDE, JR., J.:

In a sworn complaint-affidavit dated 31 July 1995, the complainant charged the respondent with grave misconduct and acts highly inimical to the judiciary, and demanded the outright dismissal of the latter from the service.

The antecedent facts are as follows:

On 30 March 1995, one Lilia T. Aaron filed with the Regional Trial Court of Makati City a complaint for "Specific Performance and Damages with Consignation, Preliminary Attachment and Preliminary Injunction and/or Temporary Restraining Order." The case was docketed as Civil Case No. 95-521 in Branch 66 of the said court.

On 6 April 1995, after an *ex-parte* hearing, the court issued an order finding that there exists a ground for the issuance of a preliminary writ of attachment which is that the defendant appears to be guilty of fraud in contracting the obligation. It then disposed as follows:

> WHEREFORE, let the preliminary writ of attachment issue for the attachment of defendant's property with a value of P11,382,000.00, more or less, after the plaintiff has posted a bond, cleared by the Office of the Clerk of Court and approved by this Court, in the amount of P1,000,000.00 to answer for the damages that defendants may suffer by reasons of the attachment, if later on, the Court finds the plaintiff is not entitled thereto.
>
> In order to maintain the status quo and not to render moot and academic or ineffectual the relief prayed for in the complaint, the defendants, their agents or representative are hereby temporarily enjoined from disposing or encumbering the house and lot covered by TCT No. 149433 of the Register of Deeds of Makati.[1]

On 10 April 1995, after Aaron filed the required bond, the court issued a writ of preliminary attachment, which specifically stated that the claim of Aaron was P11,382,000.00, and commanded the sheriff, herein respondent Arturo A. Ramos,

> to attach the estate, real and personal of the said defendants in your province to the value of the said demands and costs of suit and that you

> safely keep the same according to these rules, unless the defendant/s gives security to pay such judgment as may be recovered in the said action in the manner provided by the Rules of Court".[2]

On 11 April 1995, respondent Ramos filed with the Register of Deeds of Makati City a "Notice of Attachment and/or Levy of Real Properties" informing the latter of the levy upon all the rights, claims, shares, interests, and participation of the defendants (herein complainant and his wife) over the lots covered by Transfer Certificates of Title Nos. 183949 and 199480, which are, according to the complainant, a residential house and lot and a vacant residential lot, respectively, located in Ayala, Alabang, Muntinlupa, with a total value of P30 million. The respondent likewise levied on attachment the complainant's rights and interest in the Ayala Alabang Homeowners Association. He did not attach the lot subject of Civil Case No. 95-521, which is covered by TCT No. 149433 because, as he explained, plaintiff Aaron told him not to, it having been already covered by the restraining order.

The complainant then filed a motion to exclude the attached property and to cite the respondent in contempt of court, which was later amended to emphasize the fact that the respondent did not attach the property subject of the case and covered by TCT No. 149433, but instead attached those covered by TCT Nos. 183949 and 199480. The complainant maintained that pursuant to *Gruenberg vs. Court of Appeals,*[3] only the property under litigation should have been attached.

In its order of 24 May 1995,[4] the court granted the motion to exclude the attached property, and ordered the attachment of the house and lot covered by TCT No. 149433 whose value is, according to it, sufficient to cover the claim of Aaron. It, however, denied the motion to hold the respondent in contempt of court.

Upon the denial of her motion to reconsider the aforesaid order, Aaron filed with the Court of Appeals a petition for *certiorari,* which was docketed as CA-G.R. SP No. 37489. In its decision of 30 June 1995, the Court of Appeals dismissed the petition.

The Court of Appeals made the following ratiocination in arriving at a ruling that the trial court did not abuse its discretion in granting the motion for exclusion:

> 1. It is plain and clear as noonday that per the Order of April 6, 1995, the lower court issued the preliminary writ of attachment on the "defendant's property with value of P11,382,000.00," which consists of the house and lot located at 304 Apo Street, Ayala Alabang Village, and covered by TCT 149433.
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> When the sheriff levied the other properties of the respondents covered by TCT 183949 and TCT 199480, instead of the property covered by TCT 149433, [he] disobeyed the order of the court of April 6, 1995, and in effect the sheriff was arrogating upon himself judicial powers which he did not have. Such act of the sheriff was highly irregular, illegal and absolutely null and void. The sheriff is not the court, he cannot be above and superior to the court, and he cannot act as if he has the power of the court in levying other properties of respondents which are not indicated per said Order of April 6, 1995.

x x x

> Section 5 of Rule 57 of the Rules of Court provides for the "Manner of attaching property," as follows:
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> x x x
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> Note, the law requires the sheriff to execute the order of attachment, in the present case the Order of April 6, 1995, which limited the levy only to the property covered by TCT 149433 located at Apo Street, subject matter of the suit. But in executing the order, the sheriff went beyond the terms of the order, in effect by his own act and without legal authority, amended or revised the order, an act contemptuous in character.
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> x x x
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> It is thus clear from the above, that when the sheriff proceeded to levy not the parcel of lot covered by TCT 149433, but instead the parcels of land covered by TCT 193949 and TCT 199480, it was upon the instance of the petitioner, in complete disregard of the order of the court of April 6, 1995, which he was duty bound to obey. The sheriff, being an officer of the court, and not of the petitioner, obeyed instead the petitioner who had no power or authority, under the law, to cause the sheriff to levy other properties of respondents in violation of the order of the court.[5]

In view of the foregoing decision of the Court of Appeals, the complainant filed the instant complaint.

In his Comment[6] submitted in compliance with the resolution of 18 September 1995, the respondent admitted having levied on attachment "personal and real properties" of the complainant consisting of the latter's shares of stocks at Ayala Alabang Homeowners Association and the lots covered by TCT Nos. 183949 and 199480 together with the improvements existing thereon. He justified his action by alleging

> That in enforcing the Writ of Preliminary Attachment it is common knowledge and practice that the plaintiff is the one supplying information of the properties of the defendants to be attached".
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> That in the Order of April 6, 1995, it was not specifically ordered that the property to be attached is only the house and lot covered by TCT No. 149433.
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> That [he] was of the impression that based on the tenor of the Order of April 6, 1995, the attachment of the properties other than the subject property enjoined to be sold is proper because it would be unlikely to attach the property that is already a subject of temporary restraining order. The temporary restraining order has already protected the plaintiff with respect to said property. It was [his] impression that the attachment referred to properties other than the property which is the subject of the temporary restraining order because the complaint, aside

> from praying for recovery of the money that the complainant allegedly gave to the defendant, also prays for compensatory damages in the amount of P3,000.000.00 exclusive of moral damages in the amount of P10,000,000.00.

He further alleged that the lots covered by TCT Nos. 183949 and 199480 have an aggregate market value of only P3,489,430.00 as shown in their tax declarations, and not P30 million, as claimed by the complainant. Finally, the respondent submits that he did not commit any misconduct.

The complaint filed a reply to the comment.

In compliance with the resolution of 1 July 1996, the parties separately informed the Court that they agree to submit this case for decision on the basis of the pleadings already filed.

In his Memorandum dated 27 February 1996, Deputy Court Administrator Bernardo P. Abesamis recommended that since no substantial damage was sustained by the complainant with the lifting of the levy over the two properties at Ayala, Alabang, Muntinlupa, only a FINE equivalent to his one-month salary should be imposed upon the respondent with a warning that similar acts in the future will be dealt with more severely. This recommendation is based on the following findings:

> It is therefore surprising why until this moment, it has not yet even dawned upon the mind of the respondent that he is not above the law but should be subservient to it (del Rosario vs. Bascar, Jr., 206 SCRA 678). He persists in his rationalization that he did right because in the prepared form of the directive issued for the sheriffs by the court, there are, inter alia, words to the effect that he could attach properties, etc., of the losing party to carry out the decision. This interpretation of ready-made forms adopted by the courts for convenience and for saving time should not be understood and interpreted out of the context. Respondent manifested either extreme naivety/innocence or deceptive spirit. We say it is the latter. Shall we believe that a sheriff, well-versed with his job, going around for long in his execution-tasks, still at the dark or confused whether or not he has discretion in implementing orders? Does he not know that his duties are merely ministerial in nature? He has been in the government service since 1962 with three (3) civil service eligibilities and considered definitely "veteran" or "hustler" in the workings of a court. It does not necessarily follow that since there was no prohibition for him, in the notice of attachment levy issued by the court a quo, he could already attach other properties not specifically described therein.
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> Respondent is not the judge, therefore, he cannot add nor subtract to the content of the order issued by the court below. His duty is only to implement, to help carry out, said order. To think and do otherwise is definitely an act amounting to grave abuse of authority (Salazar vs. Villaflor, 81 SCRA 229).
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> The obstinacy and insubordination being displayed by the respondent amidst the proofs that he was really wrong in what he did to the