

GVM, INC., AS SEC-APPOINTED RECEIVER FOR FUIFC AND FNCC CAPITAL CORPORATION, COMPLAINANT, VS. ARMANDO DE GUZMAN, DEPUTY SHERIFF OF RIZAL DETAILED AT MAKATI, METRO MANILA, RESPON...

A.M. No. R-284-P. November 11, 1993

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PER CURIAM:

The issue posed in this administrative complaint is whether the respondent sheriff, Armando M. de Guzman, is liable administratively for enforcing, in a very harsh and oppressive manner, a writ of possession two (2) days before the authorized date set for its implementation.

In support of its complaint, the complainant, GVM, Inc., points to the fact that the respondent was not the regular sheriff attached to the court which issued the writ of possession but a special sheriff. Not only was he appointed rather hastily, but he also destroyed valuable pieces of evidence which complainant had been assiduously gathering, compiling, classifying, analyzing and keeping for use against the owners and managers of the financially distressed corporations wherein complainant was ordered to act as receiver by the Securities & Exchange Commission[1] and against the AEA Development Corporation which had bought the distressed corporations' building allegedly in fraud of creditors.

Going over the records with the eye of a Sherlock Holmes, this Court finds for complainant.

According to complainant, the antecedent facts of this case are the following:

“1. On June 27, 1984, AEA Development Corp. filed a case against complainant, docketed as Civil Case No. 7701, entitled Petition To quiet Title, involving the land and building denominated as FNCC Bldg., located at Legaspi St., Legaspi Village, Makati, Metro Manila.

“2. On June 28, 1984, just a day after said case was filed, Judge Aguinaldo of Branch 143 (RTC, Makati), to whom the case was speedily raffled on that same day, issued, without benefit of a hearing, an ex--parte order granting AEA's prayer for an immediate Writ of Possession, which in effect disposed of the merits of the case which is to quiet title, and AEA was not in possession of the building then. Judge Aguinaldo went on leave immediately after issuing aforementioned order.

“3. On September 6, 1984, the regular Deputy Sheriff of Branch 143, Jose A. Ascano, served for the first time, the summons (with complaint attached) in AEA's case upon complainant, said Deputy Sheriff served as well upon the complainant a Notice to Vacate the building, giving complainant fifteen (15) days (or up to September 21, 1984) to voluntarily do so.

“4. On September 20, 1984, one day (1) before the deadline mentioned, respondent Deputy Sheriff de Guzman (who somehow replaced the regular sheriff and got himself an appointment as special sheriff on September 20, 1984) suddenly implemented the writ of possession when his demands were refused by one of the officers of GVM, Inc. in the most abusive, reckless, oppressive and barbaric manner. The order was served at 6:00 p.m. of September 20, 1984, although respondent claimed it was done at 3:30 p.m. Either way, it was simply

impossible for the complainant to go to court to apply for any judicial remedy because of time constraint. The ejectment was carried out up to the following day, September 21, 1984, a public holiday. Obviously, the ejectment was so timed as to prevent complainant from seeking judicial remedies.

“5. On August 30, 1984, complainant herein filed a case against AEA Dev. Corp. involving the same property, for annulment of Contract with damages, docketed as Civil Case No. 8331, which surprisingly, was also raffled in the sala of Judge Aguinaldo.

“6. That because of the barbaric and oppressive manner respondent implemented the Writ of Possession (see pictures attached to complaint), very important and very valuable documents were lost and/or damaged consisting of promissory notes of debtors of the corporations, certificate of stocks, loan documents detailing transactions worth millions of pesos, payroll sheets, other accounting records and statements, etc., including vital documents to support and prove complainant’s case (CC No. 8331) against AEA DEV. Corp.

“7. That because of the loss of important, valuable and vital documents, the Securities and Exchange Commission had no recourse but to order the liquidation of FNCC Capital Corp. Also because of this incident, the Receiver-Liquidator, with the approval of the Securities and Exchange Commission, was compelled to compromise Civil Case No. 8331 as it lost the documents to prove its case against AEA DEV. Corp., thanks to respondent.”[2] (Underscoring in the original)

Respondent vehemently denied complainant’s allegations and claimed that what transpired is as follows:

“Civil Case No. 7701, was filed by AEA Development Corp., with Branch 143, of the Makati, RTC, asking that it be placed in possession the AEA building located on a parcel of land situated in Legaspi Village, Makati, Metro Manila, because it owned the land and building which was covered by a title in its name.

“The Writ of Possession was issued and a corresponding copy thereof together with the Notice to Vacate was served upon the officers or agents of GVM, Inc., on September 6, 1984, which was then acting as SEC RECEIVER for two field financing companies holding office on 3 floors of the AEA building.

“To forestall their ejectment from the building, GVM, Inc., filed in the court which issued the Writ of Possession, a motion to dismiss the petition, and later a motion to quash the Writ of Possession. Both motions were resolved against the movant on September 20, 1984. On the same date, respondent upon motion of AEA, was designated to enforce the Writ of Possession issued by the court earlier.

“Respondent proceeded to the AEA Building and found one of GVM’s lawyers, Atty. Marcelino Villanueva and served him with a copy of the Writ of Possession, the Order Denying their Motion to Dismiss and their Motion to Quash Writ of Possession.

“The counsel of AEA Development Corp., Atty. Alfredo Estrella who was then with respondent Deputy Sheriff, refused to grant the request of complainant’s lawyers and officers for a second 7-day extension. After negotiation between the lawyers of both parties, a compromise was forged, and it was agreed that the third and ground floors will be vacated on that day by GVM, Inc., and that the second floor occupied by them for audit, examination and investigation purposes will be vacated the following day.

“Removal of the furnitures and fixtures of complainant was done by the movers brought along by AEA, who were assisted by men of GVM, INC.”[3]

On January 21, 1986, the Court Administrator ordered the Executive Judge of the Makati Regional Trial Court to investigate the complaint and submit a report. The ratio and recommendatory portions of the report are as follows:

“The administrative complaint is impressed with merit.

“Paragraph 3 of Administrative Circular No. 12 of the Supreme Court dated 1 October 1985 reads:

‘The judge of the Regional Trial Court, Metropolitan Trial Court, and the Municipal Trial Court in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another Branch without first securing the consent of the Presiding Judge thereof;

This aforequoted provision thus gives the Judge the right to designate a special sheriff in lieu of the regular sheriff. But whether or not this rule had been strictly followed by the Judge, the latter’s act in appointing respondent as Special Sheriff cannot be taken against herein respondent. Notwithstanding this however, the court cannot simply ignore the act of respondent in implementing the writ of possession even before the lapse of the expiration period. While it is true that the regular sheriff originally gave herein complainants a 7-day period within which to vacate the premises in question, the same was extended to 15 days. This, respondent did not refute. Hence, the respondent’s act in implementing the said writ a day before the expiration of the period given to complainants to vacate the premises in question was irregular.

“Premises considered, it is respectfully recommended that respondent be held liable for conduct grossly prejudicial to the best interest of the service and correspondingly meted with the penalty of suspension from office for six (6) months and one (1) day.[4]

SC Administrative Circular No. 12 dated October 1, 1985 is not applicable to the case at bar for the simple reason that said circular was not yet existing when respondent was appointed Special Sheriff on September 20, 1984. But the writ of possession was prematurely implemented. The recommended penalty, however, of suspension for six (6) months and one (1) day is too light a penalty to be meted out to respondent.

In the past, the Court has already stated that:

“[W]hen a writ is placed in the hands of a sheriff, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate x x x he has no discretion whether to execute it or not. x x x”[5] (Italics in the original)

and, in another case where a deputy sheriff delayed to serve a warrant of arrest,[6] the Court stated that:

“There is no question that it was one of his duties to effect the prompt and effective service of the orders and warrants issued by the court. When he failed to act, it was certainly the business of the complainant to bring such official inaction to the attention of the appropriate governmental authority. x x x”[7]

The case before us is unique in that the special sheriff was EXTRA prompt in implementing the writ of possession. The complainant had already been served a Notice to Vacate by the regular deputy sheriff, Jose A. Ascaño, in the following tenor:

“NOTICE TO VACATE

“TO: FNCC CAPITAL CORPORATION and

GVM INCORPORATED

FNCC Building, 151 Legaspi Street

Legaspi Village, Makati

Metro Manila

G R E E T I N G S :

For your information and guidance, I am enclosing herewith copy of the Writ of Possession issued by the Court in the above-entitled case for compliance.

This office is giving you a period of fifteen (15)[8] days upon receipt hereof to voluntarily vacate the premises in question and failure on your part to do so, much to our regret we will be constrained to force into effect the said Order to the limit provided by law.

Trusting your early compliance on the above matter, we are.

Makati, Metro Manila, September 6, 1984.”[9]

Complainant had, therefore, until the close of office hours on September 21, 1984 to vacate the premises. Deputy Sheriff Ascaño could only start to implement the writ, at 8:00 A.M. of September 22, 1984 or immediately thereafter. In theory, he could have padlocked the premises at 5:01 P.M. of September 21, 1984 but, as is the usual practice of giving the ejectment defendant more time in removing its properties from the premises to be padlocked, and, more importantly, because regular office hours are only from 8:00 A.M. to 5:00 P.M., Deputy Sheriff Ascaño opted not to implement the writ on that day. Under either situation, as of September 20, 1984, the complainant had until 5:00 P.M. of September 21, 1984 - a full two (2) days before the deadline indicated in the Notice to Vacate would expire.

The writ of possession was implemented, not by regular deputy sheriff Ascaño, but by special sheriff Armando M. de Guzman in the afternoon of September 20, 1984. The latter claims that the complainant was only given seven (7) days from September 6, 1984 to vacate the building, or until September 13. He refused to note that the regular deputy sheriff had given the complainant an additional eight (8) days because it was clear from the Notice to Vacate that the word “seven” and number “7” had been crossed out and replaced with the word “fifteen” and number “15” and THEN initialled by deputy sheriff Ascaño.

In any event, it stands to reason, that if only seven (7) days had originally been granted the complainant without any extension, then AEA Development Corporation would have moved for the implementation of the writ by the 14th of September, which the latter did not. As the records show, respondent was designated to enforce the writ ONLY on September 20, 1984, as can be seen from the order of the trial court:

“Acting on the motion dated September 20, 1984, and finding the same to be reasonable, the motion is granted. Deputy Sheriff Armando M. de Guzman is hereby designated to enforce the writ of possession which was issued by this Court.

“SO ORDERED.

“Makati, Metro Manila, September 20, 1984.”[10]

While SC Administrative Circular No. 12 was not yet in existence when the respondent was appointed special sheriff, and, therefore, the consent of respondent’s presiding judge for respondent’s appointment as special sheriff in another sala was not necessary, still the trilogy of (1) respondent’s “midnight appointment,”[11] (2) the dismissal of complainant’s motions to dismiss and quash writ of possession issued in said civil case No. 7701,[12] and (3) the ejectment of complainant from the building ALL effected on September 20, 1984 lend credence to complainant’s plaint:

1. On why respondent sheriff implemented the writ of possession on September 20, 1984 instead of on September 21, 1984, or one (1) day earlier, in the late afternoon at that and making sure that the following day was a public holiday, where complainant would have no recourse for a judicial remedy;
2. That respondent implemented the Writ of Possession in a very oppressive, reckless and barbaric manner resulting in the loss of vital documents, knowing that FNCC Capital Corp. is a financing company, and consequently its loan documents and papers are its assets. Respondent’s conduct is highly deplorable.

3. That among the documents lost as a result of respondent's reckless implementation of the Writ of Possession are the documents needed for complainant to prove its case against AEA Dev. Corp., the party which paid respondent for his services in implementing said writ. Was this reckless implementation of the Writ by respondent done on purpose precisely to make sure that said documents would get lost and pilfered as claimed by respondent?[13]

This illegal implementation of the writ by the respondent, was confirmed by an independent party, the "Benjamin L. Sim & Co.," certified public accountants,[14] in its Notes to Financial Statements.[15]

The very description of respondent's actuation in the implementation of the writ as one characterized by "harshness" indicates the nature, character and manner with which respondent effected the transfer of possession. Exhibits "H", "H-1" and "H-2," which are pictures of the topsy-turvy condition of the tables, chairs and equipment thrown out of the building and the scattered documents and papers, attest to the mute and eloquent evidence of the carnage that resulted as a result of respondent's reckless and oppressive manner in implementing the writ of possession.[16]

The Court can only ask itself just how many good reasons impelled respondent to OVERZEALOUSLY and PREMATURELY implement the writ of possession.

The premature implementation of the writ is in itself a badge of bad faith and evident intent to deny the complainant his right to procedural due process.

The service of the writ at the start of office hours on September 22, 1984, would not have prejudiced AEA Development Corporation.

The Court holds, therefore, that respondent's actuations in harshly implementing the writ of possession in said civil case No. 7701 a full two (2) days before its scheduled implementation constitutes oppression, gross misconduct and discourtesy and the Court holds that the penalty is dismissal from the service.

WHEREFORE, respondent deputy sheriff Armando M. de Guzman is found guilty of oppression, gross misconduct and discourtesy in the unauthorized and premature implementation of the writ of possession issued by the Makati Regional Trial Court in Civil Case No. 7701 and is hereby DISMISSED from the service with forfeiture of all benefits he may be entitled thereto, and with prejudice to future reinstatement in the government service and employment in government owned and/or controlled corporations.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quaison, Puno, and Vitug, JJ., concur.

[1] Order, "In the Matter of FIRST UNITED INVESTMENT & FINANCE CORPORATION," issued March 31, 1984 by Manuel G. Abello, Chairman, and concurred in by Julio A. Sulit, Jr., Gonzalo T. Santos, Jr., Jesus Valdes and Rasario N. Lopez, Associate Commissioners.

[2] Rollo, pp. 101-103.

[3] Ibid., pp. 93-94.

[4] Ibid., p. 188.

[5] Young v. Momblan, A.M. No. P-89-367, 205 SCRA 33, 36, 37 (1992) citing "The Manual for Clerks of

Court,” p. 178, in turn citing 47 Am. Jur. 855.

[6] Peñalosa v. Viscaya, Jr., A.M. No. P-1391, 84 SCRA 298 (1978).

[7] At p. 301.

[8] Originally, seven (7) days were given to the complainant by deputy sheriff Ascaño. He, however, granted then fifteen (15) days and initialled the corrected date on the Notice to Vacate itself.

[9] Exhibit “D” of the complaint; Rollo, p. 19.

[10] Order dated September 20, 1984 and penned by the Hon. Zoilo Aguinaldo, presiding judge, Branch 143, Makati RTC, in “AEA Development Corporation vs. FNCC Capital Corporation and GVM, Inc.” Civil Case No. 7701.

[11] Exhibit “2” of the Answer; Rollo, p. 48.

[12] Exhibit “3” of the Answer; Rollo, pp. 49-54.

[13] Rollo, p. 103.

[14] Hired to audit the distress corporations’ book of accounts; Rollo, p. 69.

[15] 17. POST FINANCIAL STATEMENT EVENTS

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17.3 Ejectment of the Receiver from the FNCC Building by AEA Development Corporation - On the late afternoon of September 20, 1984, AEA Development Corporation, after a series of hearings before the SEC, in court, and off-court with GVM, Inc. on the controversy over the building, served a court order on the Receiver, dispossessing the latter of possession and occupancy of the building.

The turn of events not anticipated. ADDED TO THE HARSHNESS WITH WHICH THE EJECTMENT WAS SERVED and the resistance offered by the Receiver, a good deal of records and equipment of all the companies housed in the building were either lost, damaged, or were totally destroyed in the process. (Emphasis and italics supplied)

[16] Rollo, pp. 31-33.

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